

1 Darrah - Highly Confidential - Trade Secret

2 A F T E R N O O N S E S S I O N

3 2:15 p.m.

4
5 THE VIDEO OPERATOR: We're back on
6 the record. The time on the screen is 2:12:57.

7 S T E P H E N C. D A R R A H,
8 resumed, having been previously duly sworn, was
9 examined and testified further as follows:

10 CONTINUED EXAMINATION

02:12:58 11 BY MR. PAYTON:

02:13:00 12 Q. Mr. Darrah, do you know a
02:13:02 13 Mr. Knudson, with a K?

02:13:06 14 A. Don Knudson?

15 Q. Yes.

02:13:08 16 A. Yes, I do.

02:13:08 17 Q. Did he work for you?

02:13:12 18 A. At one time he worked in my
02:13:14 19 organization.

02:13:14 20 Q. What did he do?

02:13:18 21 A. He was the plant manager of the
02:13:22 22 Bermuda Hundred facility at one time. The second
02:13:24 23 time he worked in my organization, he was the
02:13:26 24 director of quality assurance. Excuse me. He
02:13:32 25 was the director of quality assurance and

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:13:34 2 manufacturing services.

02:13:58 3 Q. We were discussing the solubles that
02:14:02 4 are extracted from -- I think you called it the
02:14:04 5 basic raw material, I called it the dry raw
02:14:06 6 material. Do you remember this?

02:14:06 7 A. Yes.

02:14:10 8 Q. And in the one document I showed you,
02:14:12 9 there was a reference to the SEL, the strong
02:14:16 10 extracted liquor, being a tobacco extract. Do
02:14:18 11 you recall that? You saw that?

02:14:20 12 A. Yes, I saw that, but I think I made a
02:14:24 13 point about tobacco extract, and I didn't really
:14:26 14 agree that that was a tobacco extract, the
02:14:30 15 extracted solubles being tobacco extract.

02:14:30 16 Q. I understand. You personally didn't
02:14:32 17 agree with that.

02:14:32 18 A. That's correct.

02:14:34 19 Q. The document you saw did refer to it
02:14:38 20 as a tobacco extract, the SEL.

02:14:38 21 A. I believe it did.

02:14:40 22 Q. And it was a reference to a material
02:14:40 23 safety data sheet?

02:14:42 24 A. That's correct.

02:14:44 25 Q. Have you ever seen a Philip Morris

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02:14:50 2 material safety data sheet that refers to or is a
02:14:54 3 material safety data sheet for tobacco extract?

02:14:58 4 A. Not to my knowledge, Mr. Payton.

5 (Darrah Exhibit 7 for
6 identification, Philip Morris U.S.A. material
7 safety data sheet for processed tobacco extract.)

02:15:50 8 Q. Mr. Darrah, you've just been handed
02:15:56 9 what's been marked Darrah 7, which is a Philip
02:16:02 10 Morris U.S.A. material safety data sheet for
02:16:04 11 processed tobacco extract. Production number PA
02:16:14 12 414191 through 97, 2030542024 through 2030.

02:16:16 13 Have you seen material safety data
02:16:18 14 sheets before?

02:16:22 15 A. I have seen an example, an
02:16:24 16 administrative example of a material safety data
02:16:24 17 sheet.

02:16:28 18 Q. You recognize this as a material
02:16:30 19 safety data sheet?

02:16:30 20 A. Mm-hmm.

02:16:32 21 MR. NUNLEY: Not this one
02:16:32 22 particularly, but this form?

02:16:34 23 MR. PAYTON: Yes, just this form.

02:16:36 24 A. The general format, yes.

02:16:38 25 Q. And as I just read off, this is the

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02:16:40 2 material safety data sheet, the Philip Morris
02:16:44 3 material safety data sheet, that is for processed
02:16:48 4 tobacco extract. Do you see that on the first
02:16:48 5 page?
02:16:48 6 A. Yes, I do.
02:16:52 7 Q. And do you see that there is actually
02:16:56 8 an MSDS number on the first page at the top? Do
02:17:00 9 you see it says, number 05242?
02:17:00 10 A. Yes, I do.
02:17:04 11 Q. And if you look back onto Darrah
02:17:08 12 Exhibit Number -- I do not recall the exhibit
02:17:10 13 number -- 6, which is the procedure for
02:17:12 14 collecting SEL samples.
02:17:14 15 A. Mm-hmm.
02:17:16 16 Q. And under "Safety precautions"
02:17:16 17 there's a reference to the material safety data
02:17:20 18 sheet on processed tobacco extract, and it refers
02:17:24 19 to MSDS number 05242. Do you see that?
02:17:26 20 A. Yes, I do.
02:17:26 21 Q. So this is the material safety data
02:17:30 22 sheet relating to processed tobacco extract
02:17:32 23 that's being referred to in Darrah Exhibit 6?
02:17:34 24 MR. NUNLEY: Well, the documents
02:17:36 25 speak for themselves, Mr. Payton. Either they

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:17:38 2 are or they're not.

02:17:40 3 Q. It's the same numbers, do you see
02:17:40 4 that, Mr. Darrah?

02:17:42 5 A. Yes, I do.

02:17:52 6 Q. And if you want to take a look
02:17:56 7 through this document, acquaint yourself with
02:18:00 8 it.

02:18:04 9 (Witness complies.)

02:18:48 10 MR. NUNLEY: Mr. Darrah, I might
02:18:52 11 direct to you Roman numeral VIII, and Roman
02:18:54 12 numeral XI.

02:19:14 13 THE WITNESS: Okay.

:19:18 14 Q. Do you agree with me that SEL is
02:19:22 15 classified as a processed tobacco extract in this
02:19:22 16 material safety data sheet?

02:19:28 17 A. I don't see SEL mentioned in the data
02:19:34 18 sheet. I may have missed it, but strong
02:19:36 19 extracted liquor, I did not see that term in
02:19:36 20 there.

02:19:40 21 Q. Darrah 6, it refers to SEL in
02:19:42 22 reference to the material safety data sheet.
02:19:48 23 You're right. I did it backwards. Darrah 6,
02:19:58 24 which is the procedure for collection of SEL
02:20:00 25 samples, you see under "Safety precautions," it

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2 refers to SEL as a tobacco extract.

02:20:00 3 A. Right.

02:20:02 4 Q. And references immediately prior to
02:20:04 5 that the material safety data sheet, 05242.

02:20:06 6 A. Right.

02:20:32 7 MR. NUNLEY: Mr. Payton, when you're
02:20:34 8 finished with that, I have a comment for the
02:20:36 9 record, but I don't want to make it until you're
02:20:38 10 finished.

02:20:40 11 MR. PAYTON: What do you mean, you
02:20:40 12 have a comment for the record?

02:20:42 13 MR. NUNLEY: Just what I said.

:20:42 14 MR. PAYTON: Go ahead.

02:20:44 15 MR. NUNLEY: Thank you. I direct the
02:20:48 16 record Roman numeral VIII and Roman numeral XI.
02:20:48 17 It would suggest --

02:20:50 18 MR. PAYTON: Wait a minute. Don't do
02:20:54 19 that, Chip. Don't do that. Don't say what your
02:20:56 20 understanding of the document is.

02:20:56 21 MR. NUNLEY: Well, John, you have
02:21:00 22 suggested that the use in Darrah Number 6 was
02:21:08 23 intended to apply MSDS 05242 to SEL. Looking at
02:21:18 24 05242, it would not appear to apply to SEL. It
02:21:20 25 says, "Tobacco extract is not stored or processed

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02:21:24 2 in bulk," and that "PM does not manufacture
02:21:24 3 tobacco extract."

02:21:48 4 Q. Mr. Darrah, taking a look at Darrah
02:21:50 5 6, which is the procedure for collecting SEL
02:21:52 6 samples, under "Safety precautions," the same two
02:21:56 7 sentences we've been looking at, do you see the
02:21:58 8 second sentence that says "SEL is a tobacco
02:21:58 9 extract"?

02:22:00 10 A. Yes, I do.

02:22:10 11 Q. Do you have any basis for questioning
02:22:12 12 that characterization of SEL as a tobacco
02:22:14 13 extract?

02:22:16 14 A. Yes, I do.

02:22:18 15 Q. What?

02:22:22 16 A. Simply that SEL is an extracted
02:22:28 17 liquid from a process at Park 500, and I don't
02:22:32 18 know if "tobacco extract" as nouns and
02:22:36 19 adjectives, Mr. Payton, properly describes what
02:22:38 20 SEL is.

02:22:48 21 Q. What about CEL? That's concentrated
02:22:48 22 extracted liquor?

02:22:50 23 A. Yes, I believe it is.

02:22:52 24 Q. Is that a tobacco extract?

02:22:54 25 A. I would have to reply in exactly the

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:22:56 2 same way I did for SEL.

02:22:58 3 Q. Is that a no?

02:23:00 4 A. As I said, I would have to say the
02:23:02 5 same thing as I said for SEL, that I don't
02:23:02 6 believe it is.

02:23:04 7 Q. And DNCEL, that's denitrated
02:23:06 8 concentrated extracted liquor?

02:23:06 9 A. Yes.

02:23:10 10 Q. Is that a tobacco extract?

02:23:14 11 A. Not to my definition, it wouldn't
02:23:14 12 be.

02:23:16 13 Q. I thought you told me earlier that
:23:16 14 you weren't sure what the term "tobacco extract"
02:23:18 15 referred to.

02:23:18 16 A. That's correct. I said that I was
02:23:20 17 not sure what the definition was.

02:23:22 18 Q. Okay. And if you're not sure what
02:23:24 19 the definition is, how can you say with such
02:23:30 20 certainty that SEL, CEL, and DNCEL are not
02:23:30 21 tobacco extracts?

02:23:34 22 A. Well, there's a piece of data here
02:23:36 23 that's been given to me that says basically on --
02:23:40 24 to your line of questioning, that SEL is tobacco
02:23:40 25 extract, that it says here, for example, in

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:23:46 2 number 8, it occurs as a waste by-product where
02:23:46 3 tobacco is processed.

02:23:48 4 Well, SEL is is not a waste
02:23:52 5 by-product. It's a generated part of the process
02:23:54 6 at Park 500. "Waste by-product" says to me that
02:23:56 7 is something that occurs that is wasted and
02:23:58 8 tossed out.

02:23:58 9 Q. Okay.

02:24:00 10 A. The other point I was just going to
02:24:02 11 mention here also is that it says, "PM does not
02:24:06 12 manufacture tobacco extract." This is in number
02:24:08 13 item 11 in my Exhibit Number 7.

:24:08 14 Q. Yes.

02:24:12 15 A. "It is a by-product." And that's my
02:24:14 16 understanding, that we do not manufacture tobacco
02:24:14 17 extract.

02:24:16 18 Q. Okay.

02:24:18 19 A. I'm not sure -- it says it is a
02:24:20 20 by-product, I'm not sure -- by-product of what?
02:24:22 21 This doesn't say what it's a by-product of.

02:24:24 22 Q. Okay.

02:24:28 23 A. My reasoning, to your question, was I
02:24:30 24 don't know what the definition of "tobacco
02:24:32 25 extract" is relative to the process at Park 500.

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02:24:36 2 What I consider it not to be is part of something
02:24:38 3 that is generated within that process, such as
02:24:40 4 SEL, DNCEL or CEL.

02:24:44 5 Those represent not waste by-product
02:24:46 6 streams, but they represent streams that are
02:24:48 7 generated within the process by design for
02:24:50 8 utilization within that process.

02:24:52 9 Q. And there's no reason to believe that
02:24:56 10 a tobacco extract could not be generated inside
02:24:56 11 the process to be used inside the process, is
02:24:58 12 there?

02:24:58 13 MR. NUNLEY: Objection as to form.

02:25:04 14 A. Let me just say that -- I don't know
02:25:06 15 if I'm answering your question directly or not.

02:25:08 16 I have never considered that Park 500
02:25:10 17 at any time that I worked there, between 1974 and
02:25:16 18 approximately 1977, '78, or during my tenure over
02:25:18 19 in the United States as director, vice president,
02:25:22 20 rather, of manufacturing and production, that we
02:25:26 21 generated, for utilization or otherwise, a
02:25:28 22 tobacco extract from the RL process.

02:25:30 23 Q. Do you understand that the term
02:25:34 24 "tobacco extract" could be a generic term,
02:25:36 25 simply describing substances that are extracted

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02:25:38 2 from tobacco?

02:25:42 3 A. If that's what the definition is,
02:25:44 4 then I would have to say either I agree or I
02:25:46 5 disagree with it. I don't understand it to be a
02:25:50 6 generic term per se because I've never heard it
02:25:50 7 used as a generic term.

02:25:54 8 Q. Well, it's certainly used in Darrah 6
02:25:56 9 when it says SEL is a tobacco extract in that
02:25:56 10 way, isn't it?

02:25:58 11 A. Yes, but I think I also mentioned to
02:26:00 12 you I have not seen Darrah 6.

02:26:02 13 Q. You haven't seen either one of these
02:26:02 14 documents.

02:26:04 15 A. Exactly right.

02:26:04 16 Q. I understand. I'm just asking you to
02:26:06 17 look at these documents and see if we can figure
02:26:08 18 out what they mean.

02:26:08 19 MR. NUNLEY: Well, John, the
02:26:10 20 documents speak for themselves.

02:26:10 21 MR. PAYTON: Obviously they don't.

02:26:12 22 MR. NUNLEY: Excuse me. You're
02:26:14 23 asking him to look behind the document and tell
02:26:18 24 you what the author had in his or her mind at the
02:26:20 25 time they were written.

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02:26:20 2 Q. You had no prior, prior to seeing
02:26:22 3 these two documents, understanding as to the
02:26:24 4 definition of "tobacco extract," is that right?

02:26:26 5 A. That's correct.

02:26:30 6 Q. Go back to Darrah Exhibit Exhibit 5,
02:26:34 7 which I believe is the RL process overview. Am I
02:26:34 8 correct?

02:26:36 9 MR. NUNLEY: The one, for the record,
02:26:36 10 he's never seen before.

02:26:38 11 MR. PAYTON: That's correct.

02:26:40 12 Q. Am I right, is that Darrah 5?

02:26:40 13 A. Yes, it is.

02:27:10 14 Q. I asked you this morning if you knew
02:27:14 15 what size was, and I think you gave me an answer
02:27:16 16 to that. Do you know what the size batch prep
02:27:18 17 operation is in the RL process?

02:27:20 18 A. Yes, I remember what that was.

02:27:20 19 Q. What is it?

02:27:24 20 A. That's where, if I'm not mistaken, we
02:27:30 21 used to take the DNCEL, denitrated concentrated
02:27:34 22 extracted liquor, and through the addition of
02:27:38 23 other materials, flavors and so forth, prepare
02:27:42 24 that for reapplication to the base web.

02:27:50 25 Q. Would you go to page 114 in this

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02:27:52 2 document, and I'm talking about the page numbers
02:27:56 3 that are internal to the document itself.

02:27:58 4 A. That was 114?

02:28:00 5 Q. Yes. And as you go through, you will
02:28:02 6 see that every page is not numbered. You have to
02:28:04 7 keep going until you get the next numbered page.
02:28:10 8 It is about two-thirds of the way through.

02:28:12 9 A. I have it.

02:28:14 10 Q. It says at the top, "Size batch prep
02:28:20 11 operation, sequence in the process flow." Do you
02:28:22 12 see that?

02:28:22 13 A. Mm-hmm.

02:28:22 14 Q. It says, "The following will show the
02:28:26 15 customer/supplier relationship to the size batch
02:28:30 16 prep operation. The size batch prep operation is
02:28:32 17 one stage in the process where flavors and
02:28:36 18 tobacco extracts are mixed and sampled to ensure
02:28:40 19 proper composition. Then they are stored and
02:28:42 20 supplied when needed for applying to the base web
02:28:44 21 sheet."

02:28:44 22 Do you see that?

02:28:46 23 A. Yes, I do.

02:28:46 24 Q. Do you understand that reference to
02:28:52 25 tobacco extracts to be referring to DNCEL?

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02:28:54 2 A. As it is written here, yes, I do.

02:29:02 3 Q. Are you sure that you do not recall
02:29:08 4 DNCEL or SEL or CEL being referred to as tobacco
02:29:10 5 extracts before today?

02:29:14 6 A. I have not heard of those terms
02:29:16 7 representing a part of the process at Park 500 as
02:29:18 8 being referred to as tobacco extract.

02:29:52 9 Q. In the description you gave me just a
02:29:56 10 few minutes ago about how the size went onto the
02:30:02 11 sheet, I think you used the term "reapplied." Do
02:30:02 12 you recall that?

02:30:06 13 A. "Reapplied"?

02:30:08 14 Q. Yes.

02:30:10 15 A. Yes, I think I did use that term.

02:30:16 16 Q. Let's go back to what's been marked
02:30:22 17 as Darrah Exhibit -- whatever this is.

02:30:24 18 MR. BROWN: That's number 2.

02:30:30 19 Q. Yes, this is the February 25, 1992,
02:30:36 20 and if you go to the third page where your
02:30:36 21 signature is there, Mr. Darrah.

02:30:38 22 A. Mm-hmm.

02:30:40 23 Q. The short description of the RL
02:30:46 24 process that is in the section that says "Nature
02:30:48 25 of business."

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02:30:48 2 A. Yes.

02:30:56 3 Q. That section describes this part of
02:30:58 4 the process in the last, next to last sentence, I
02:31:00 5 believe. It says, "The extracted solubles are
02:31:04 6 cleaned, processed, concentrated by evaporation,
02:31:08 7 and applied onto the tobacco sheet."

02:31:08 8 Do you see that?

02:31:10 9 A. Yes, I do.

02:31:28 10 Q. Is this language I just read the more
02:31:30 11 accurate description?

02:31:30 12 MR. NUNLEY: More accurate than what,
02:31:32 13 John?

02:31:32 14 MR. PAYTON: "Reapplied."

02:31:34 15 MR. NUNLEY: As between "applied" and
02:31:34 16 "reapplied"?

02:31:36 17 MR. PAYTON: That's right.

02:31:40 18 A. Well, I think we're talking about a
02:31:44 19 nuance in the language on this. I have a certain
02:31:46 20 problem not so much with the verb "applied" as
02:31:48 21 "reapplied" that's in here, because what they're
02:31:50 22 assuming is that something has already been
02:31:52 23 removed.

02:31:54 24 When I say "reapplied," I'm including
02:31:56 25 the process of removing and reapplying. Removal

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02:32:00 2 of concentration, mixing of additives and
02:32:06 3 flavors, and reapplying. Now, here, what it
02:32:06 4 basically says is the clean, processed
02:32:12 5 concentrate -- just the extracted solubles are
02:32:16 6 cleaned, processed, concentrated, applied to the
02:32:18 7 tobacco sheet.

02:32:20 8 I think it's semantic to say
02:32:22 9 "applied" versus "reapplied." I'm including
02:32:24 10 everything that occurs before the word "applied"
02:32:26 11 in here when I say "reapplied." Secondly, I have
02:32:28 12 a problem about "tobacco sheet" on here. I
02:32:28 13 question whether that's the accurate description
02:32:32 14 of the way I understood the process.

02:32:34 15 If that said "base web," "applied
02:32:38 16 to," "reapplied to the base web," I would say
02:32:40 17 that would be a more accurate description than
02:32:40 18 "tobacco sheet."

02:32:44 19 Q. Has your understanding changed over
02:32:46 20 time, or has that always been your understanding?

02:32:48 21 A. That's always been my understanding,
02:32:50 22 Mr. Payton. The terminology we used at Park 500
02:32:54 23 is that the base web was what came off the Yankee
02:32:56 24 dryer, would go throughout tunnel dryers, to the
02:33:00 25 size press. At the size application point, then

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02:33:02 2 that became the tobacco sheet.

02:33:04 3 That was the finished product that
02:33:08 4 was dried, converted into something that went
02:33:10 5 into a hogshead or a case.

02:33:32 6 Q. Well, you've heard of the base web
02:33:34 7 referred to as a tobacco sheet before, haven't
02:33:34 8 you?

02:33:36 9 A. No, I haven't. As a matter of fact I
02:33:38 10 never heard of the base web referred to as a
02:33:40 11 tobacco sheet. I've heard it always referred to
02:33:40 12 as base web.

02:33:42 13 The terminology "tobacco sheet" has
02:33:44 14 always been, at least in my experience from
02:33:46 15 working there and any discussions that we had
02:33:48 16 that I can remember down there, was that the
02:33:50 17 finished sheet or tobacco sheet had the
02:33:54 18 connotation of what happened from the size press
02:33:58 19 downstream, not size press upstream.

02:34:00 20 Q. How did you come to sign this
02:34:04 21 description that uses the term "tobacco sheet" in
02:34:06 22 this document that you signed after personal
02:34:10 23 inquiry and under penalty of perjury?

02:34:10 24 A. Well, let me just say --

02:34:12 25 MR. NUNLEY: Well, John -- stop a

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minute. Are you suggesting -- I take offense at this. This gentleman has come over here, you haven't had to go to London to get him, and now you're accusing him of perjury based on an effluent permit that has as a part of it a casual description of the process.

You know as well as I do the purpose of this is to describe the effluent. Now, you showed this witness a document that dated -- predated his signature, that had the same description of the process.

MR. PAYTON: I did. I did, exactly. I did. That was signed by the senior vice president for manufacturing of Philip Morris. It had the same description.

MR. NUNLEY: And I think you would agree that that description is secondary to the purpose of this document.

Q. On the form where your signature appears --

A. We're on Exhibit Number 2 still?

Q. Yes. There are two pages of form that precede your signature, and this is the only typed description. Is that correct, Mr. Darrah?

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02:35:32 2 A. I believe it's the only typed
02:35:36 3 description of the manufacturing process. There
02:35:38 4 is a typed description of the wastewater
02:35:38 5 treatment process.

02:35:40 6 Q. And that is in a next part of the
02:35:42 7 form. I said in the two pages that precede your
02:35:44 8 signature.

02:35:44 9 A. Yes, that is correct.

02:35:46 10 Q. And then there's another description,
02:35:50 11 and you signed that on another signature page.

02:35:50 12 A. That is correct.

02:35:56 13 Q. And, Mr. Darrah, I am not accusing
02:36:00 14 you of perjury. I'm simply asking what your
02:36:02 15 explanation is for this. When I showed this to
02:36:04 16 you this morning, I showed you the whole
02:36:06 17 document. I read off the entire section. I
02:36:08 18 asked you if this was a fair description of the
02:36:10 19 RL process, and I believe you said it was.

02:36:12 20 MR. NUNLEY: He said, John, if you
02:36:14 21 had five lines to answer with.

02:36:14 22 MR. PAYTON: That's what he said.
02:36:14 23 That's correct.

02:36:16 24 Q. Right? You said given the number of
02:36:20 25 lines, this was a --

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02:36:22 2 A. Good job, I think was the terminology
02:36:22 3 I used to describe the RL process.

02:36:24 4 Q. That's right. And I showed that all
02:36:24 5 to you.

02:36:24 6 A. Right.

02:36:26 7 Q. I asked you about that, and that was
02:36:30 8 your answer. And I'm now asking why you didn't
02:36:32 9 make any note at all of tobacco sheet in there,
02:36:36 10 if you say you had never seen that term used that
02:36:36 11 way before.

02:36:38 12 A. Well, basically because now we're
02:36:42 13 talking about tobacco extracts, solubles, size
02:36:44 14 prep makeup and so forth.

02:36:44 15 And in looking at this description on
02:36:46 16 this, I want to make it very, very clear to you
02:36:48 17 during this questioning that the interpretation
02:36:52 18 of this as I'm reading it now, and I think that
02:36:54 19 you brought out the concentration on the next to
02:36:56 20 last line, "extracted solubles" at the beginning
02:36:58 21 of the sentence and "sheet" at the end of it, I
02:37:00 22 read that a couple of times to make sure if
02:37:04 23 Mr. Payton understands very clearly if I agree
02:37:06 24 with it or did I agree with it.

02:37:06 25 The point I'm making is I disagree

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2058447856

1 Darrah - Highly Confidential - Trade Secret
02:37:10 2 with the "tobacco sheet" nomenclature for a
02:37:14 3 process description as a point in the process. I
02:37:16 4 have no problem with a generic description of
02:37:16 5 this type in a five-line description.

02:38:00 6 Q. I want to go back to page 60. I'm
02:38:02 7 sorry, I'm simply not going to remember the
02:38:06 8 exhibit number, but in the RL process overview.

02:38:08 9 A. That was page 60?

02:38:10 10 Q. Yes, 60.

02:38:16 11 (Witness complies.)

02:38:28 12 Q. It's headed "The evaporation system,
02:38:32 13 sequence in the process flow." Do you see that?

02:38:32 14 A. Yes, I do.

02:38:34 15 Q. This is a section that's talking
02:38:36 16 about SEL. Do you see that "The SEL strong
02:38:40 17 extracted liquor that was extracted in the press
02:38:42 18 section continues through the liquor cleanup
02:38:46 19 system and is pumped to the evaporators to be
02:38:48 20 concentrated in preparation of being applied to
02:38:52 21 the tobacco sheet in the machine room"?

02:38:54 22 Do you see that?

02:38:54 23 A. Mm-hmm.

02:38:56 24 Q. I take it that terminology is new to
02:38:58 25 you as well, the use of "tobacco sheet" right

MANHATTAN REPORTING CORP.

2058447857

1 Darrah - Highly Confidential - Trade Secret
2 there?

02:39:02 3 A. Well, first of all, I have not seen
02:39:04 4 this document before.

02:39:04 5 Q. I understand that.

02:39:08 6 A. I would have the same observation, if
02:39:10 7 I may, with the terminology that was used here,
02:39:14 8 to describe this part of the reapplication or
02:39:20 9 application of size to tobacco sheet versus base
02:39:20 10 web.

02:39:26 11 Q. Are you sure the terms aren't used
02:39:26 12 interchangeably?

02:39:28 13 MR. NUNLEY: Asked and answered.

02:39:30 14 A. I don't know.

02:39:40 15 Q. Have you seen the term "sheet of
02:39:42 16 tobacco" used to refer to what is being referred
02:39:44 17 to as the tobacco sheet here?

02:39:50 18 A. Mr. Payton, I don't know. "Sheet of
02:39:54 19 tobacco" -- I mean, I may have read that, I may
02:39:56 20 not have read that at some point in time. I do
02:40:00 21 not recall reading that in any documentation that
02:40:02 22 describes the RL process.

02:40:16 23 Q. How about a reference, a term that is
02:40:18 24 "a web of tobacco sheet"? Have you seen that in
02:40:20 25 terms of the RL process?

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1 Darrah - Highly Confidential - Trade Secret

02:40:22 2 A. Not to my knowledge, no.

02:40:42 3 Q. Do you know who would have prepared
02:40:48 4 this application that has your signature in
02:40:50 5 Darrah Exhibit 2?

02:40:54 6 A. Let me say that -- and I think I
02:40:56 7 mentioned, I don't know who Ethel G. Tatum is. I
02:41:00 8 think we talked about Joe Tenhet as an
02:41:04 9 individual. And if I'm not mistaken, Mr. Tenhet
02:41:06 10 from time to time would come to my office with
02:41:10 11 one of these particular permit requirements and
02:41:10 12 so forth.

02:41:16 13 So I'm surmising it would be within
02:41:18 14 that particular department of environmental
02:41:22 15 permitting and conformance application and so
02:41:22 16 forth that we had.

02:41:34 17 Q. So Mr. Tenhet is a knowledgeable
02:41:34 18 person as far as how the RL process worked?

02:41:36 19 A. I can't give you an opinion on that.

02:42:30 20 Q. Are you familiar with the Fourdrinier
02:42:32 21 section in the RL process?

02:42:34 22 A. Yes, I am.

02:42:38 23 Q. Do you want to turn to page 99?

02:42:40 24 MR. NUNLEY: Mr. Darrah, by that, you
02:42:42 25 mean not this specific document, but the process

MANHATTAN REPORTING CORP.

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1 Darrah - Highly Confidential - Trade Secret
02:42:42 2 itself?

02:42:44 3 THE WITNESS: Yes, that's correct.

02:42:46 4 MR. PAYTON: That's what I meant.

02:42:46 5 MR. NUNLEY: But you're making
02:42:48 6 reference to a document.

02:42:54 7 Q. This is the section of the document
02:43:00 8 that -- actually go back one page, you'll see
02:43:06 9 that it begins the section, on the Fourdrinier
02:43:08 10 section. If you go back to 98, that's just the
02:43:10 11 first page of text on the Fourdrinier section.

02:43:12 12 Actually on page 98, which says
02:43:14 13 "Fourdrinier section, sequence in the process
02:43:16 14 flow," if you look at the second line you'll see
02:43:18 15 a reference to a web of tobacco sheet. Do you
02:43:18 16 see that?

02:43:26 17 A. Excuse me. What page am I on?

02:43:26 18 Q. That's 98.

02:43:32 19 A. 98. Yes.

02:43:36 20 Q. And that's a reference to what you
02:43:38 21 were referring to as the base web?

02:43:40 22 A. No. It's not.

02:43:40 23 Q. What is this?

02:43:44 24 A. This is a slurry. I mean, I'm giving
02:43:46 25 you my interpretation. This is a slurry, a very

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205847860

1 Darrah - Highly Confidential - Trade Secret

02:43:56 2 high moisture content, watery substance with some
02:43:58 3 fiber in it that is placed for dewatering at the
02:44:00 4 end of a moving screen.

02:44:02 5 When I'm talking about the base web,
02:44:04 6 the base web, to my definition, what my
02:44:06 7 understanding was as to how it was utilized is
02:44:10 8 what comes off the Yankee dryer, passes through
02:44:12 9 the tunnel dryers before it arrives at the size
02:44:14 10 press.

02:44:18 11 Q. And the Fourdrinier section is before
02:44:20 12 that stage in the process you just described; is
02:44:20 13 that correct?

02:44:20 14 A. That's correct.

02:44:26 15 Q. So this reference here on page 98,
02:44:30 16 the Fourdrinier section, is the place in the
02:44:32 17 process where stock is transformed from an
02:44:36 18 aqueous suspension to a web of tobacco sheet.
02:44:40 19 You believe that's referring to something that is
02:44:46 20 still wet, is what I would say; is that --

02:44:48 21 A. Yes, it's very wet. That's correct.

02:44:50 22 Q. It's very wet. But it's formed in
02:44:54 23 some sort of sheet, as the fibers have gone
02:44:56 24 through the paper making process; isn't that
02:44:56 25 right?

MANHATTAN REPORTING CORP.

2058447861

1 Darrah - Highly Confidential - Trade Secret

6 .44:58 2 A. Well, the fibers are starting to go
02:45:00 3 through the paper making process.

02:45:00 4 Q. Okay.

02:45:02 5 A. The --

02:45:04 6 MR. NUNLEY: Is that a question?
02:45:10 7 When he says "okay, okay," he's not posing a
02:45:10 8 question.

02:45:12 9 Q. I'll take your description. The
02:45:12 10 fibers are starting to go through the paper
02:45:12 11 making process.

02:45:14 12 A. They're starting to be transformed
02:45:16 13 into the paper making process of forming the base
02:45:16 14 web.

02:45:22 15 Q. And this reference here, "transformed
02:45:26 16 from an aqueous suspension to a web of tobacco
02:45:28 17 sheet," do you see that?

02:45:28 18 A. Yes.

02:45:30 19 Q. You said that is not what you're
02:45:32 20 referring to as the base web.

02:45:34 21 A. No, that's correct. I don't think
02:45:36 22 the term "base web" is used here.

02:45:40 23 Q. So is it the case that the web of
02:45:42 24 tobacco sheet is the term that applies at this
02:45:46 25 stage in the process, before we get to what

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2058447862

1 Darrah - Highly Confidential - Trade Secret

02:45:48 2 you're referring to as the base web?

02:45:50 3 A. Again, it's conjecture on my part to
02:45:52 4 say what the author intended to mean here,
02:45:54 5 Mr. Payton. You and I are going back and forth
02:45:58 6 on this thing. Let me try and be as concise as I
02:45:58 7 can about it.

02:46:00 8 When I talk about tobacco sheet, that
02:46:02 9 is a finished product that's ready to go to a
02:46:08 10 customer. That's where we have it packed out and
02:46:10 11 we now have a tobacco sheet ready to be shipped
02:46:14 12 to a customer, internally, externally, whatever.

02:46:16 13 The base web, as I described before,
02:46:18 14 is not a product for a customer. It has not been
02:46:20 15 through the last remaining steps of the Park 500
02:46:22 16 process. Now, we can talk about the nuances of
02:46:24 17 the wording and how authors or whoever put this
02:46:26 18 information together used these terms and how
02:46:28 19 they intended them.

02:46:28 20 And I don't know how they did that or
02:46:32 21 what their intent was behind this. But I'm going
02:46:34 22 to keep coming back and saying, base web to me is
02:46:36 23 a very clear point in the process and has a very
02:46:38 24 clear physical aspect of that product.

02:46:40 25 Tobacco sheet is another point in the

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205847863

1 Darrah - Highly Confidential - Trade Secret
:46:42 2 process and another set of physical
02:46:44 3 characteristics to it.

02:46:48 4 Q. Mr. Darrah, isn't the final product
02:46:56 5 that comes out of Park 500 sized tobacco sheet?

02:47:02 6 A. I call it tobacco sheet.

02:47:06 7 Q. Have you heard it referred to as
02:47:08 8 sized tobacco sheet?

02:47:08 9 A. No, I have not.

02:47:26 10 Q. Have you ever heard base web referred
02:47:30 11 to as unsized tobacco sheet?

02:47:30 12 A. No, I have not.

02:47:50 13 Q. You can turn to page 99, just because
:47:52 14 I had mentioned it, but I'm going to stop going
02:47:54 15 through these. I mentioned 99 just because it
02:47:56 16 has -- if you look at it on the second and third
02:48:02 17 paragraph, there's a reference to a sheet of
02:48:04 18 tobacco, and there's a reference to a continuous
02:48:04 19 sheet of tobacco.

02:48:04 20 Do you see those two references?

02:48:06 21 A. Yes, I do.

02:48:08 22 Q. And those are uses of those terms in
02:48:12 23 this stage of the process that you are not
02:48:12 24 familiar with; is that correct?

02:48:16 25 A. No, I am not familiar with their

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2058447864

1 Darrah - Highly Confidential - Trade Secret
:48:20 2 generic utilization to describe the process.

02:48:44 3 Q. That's what I mean. Let's go back to
02:48:46 4 page 5 of the RL process overview.

02:48:52 5 (Witness complies.)

02:48:56 6 A. 5 or 5-A?

02:48:58 7 Q. You keep going and you get to 5.

02:49:02 8 A. Okay.

02:49:06 9 Q. And page 5 is the first page of text
02:49:10 10 on the pneumatic conveyance system. Do you see
02:49:10 11 that?

02:49:12 12 A. Mm-hmm.

02:49:18 13 Q. I actually want to go over some of
02:49:24 14 these terms. Do you want to read this so you
02:49:26 15 understand what it is?

02:49:26 16 (Witness complies.)

02:49:40 17 A. Okay. The last sentence there seems
02:49:42 18 to be -- we're missing a word or something.

02:49:44 19 Q. I agree with that. The next to last
02:49:48 20 sentence, I believe we are -- let me just try to
02:49:52 21 figure out where we are. This is the dry raw
02:49:54 22 materials referred to here, that's what you were
02:49:56 23 calling the basic raw material?

02:49:56 24 A. Mm-hmm. Yes, that's correct.

02:49:58 25 Q. And it's in the pulper?

MANHATTAN REPORTING CORP.

2058447865

1 Darrah - Highly Confidential - Trade Secret

01:49:58 2 A. That is correct.

02:50:00 3 Q. And the basic raw material or the dry
02:50:06 4 raw material is primarily stems, there are some
02:50:10 5 small tobacco parts and there's some -- I think
02:50:16 6 it's called broke, things that are out of spec or
02:50:18 7 something. That's what the dry raw material,
02:50:20 8 basic raw material is?

02:50:20 9 MR. NUNLEY: Objection as to form.
02:50:26 10 John, I would like you to be more specific in
02:50:28 11 your questions, please. Objection as to form.
02:50:30 12 It's compound.

02:50:32 13 Q. What do you understand to be the
02:50:34 14 basic raw material?

02:50:36 15 A. The basic raw material is made up of
02:50:40 16 stems and other tobacco by-products that were
02:50:44 17 generated through various processes of preparing
02:50:46 18 tobacco to be converted into cut filler for
02:50:48 19 manufacturing the cigarettes or the actual
02:50:50 20 cigarette manufacturing process itself.

02:50:52 21 Q. 70 percent or more of it is stems?

02:50:54 22 A. I don't remember what the exact
02:50:56 23 percentage of stems versus the other by-products
02:50:58 24 were, Mr. Payton.

02:51:00 25 Q. But the largest single percentage is

MANHATTAN REPORTING CORP.

2058447866

1 Darrah - Highly Confidential - Trade Secret
:51:02 2 stems; isn't that right?

02:51:04 3 A. Yes, that's correct.

02:51:08 4 Q. And the second sentence here, the
02:51:10 5 material, the dry raw material or the basic
02:51:14 6 material is mixed with a specified amount of
02:51:16 7 dilution, and then the paren says, "combination
02:51:22 8 of RBW, WEL-3, and broke," close paren, to form a
02:51:22 9 slurry.

02:51:28 10 RBW is rich brown water?

02:51:28 11 A. I believe so.

02:51:30 12 Q. Do you know what rich brown water
02:51:30 13 is?

02:51:34 14 A. Let me say that I think that the rich
02:51:38 15 brown water was what was the watery squeezed
02:51:42 16 material that came out of the second press of the
02:51:44 17 three sequential press lines, if I'm not
02:51:44 18 mistaken.

02:51:46 19 Q. And the WEL-3, which I believe is
02:51:50 20 weak extracted liquor 3?

02:51:52 21 A. I believe that was the third press,
02:51:54 22 watery solution that was squeezed out.

02:51:58 23 Q. And these are solutions that come
02:52:04 24 from water being mixed in with the dry raw
02:52:06 25 material? Is that correct?

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1 Darrah - Highly Confidential - Trade Secret

2 A. Let me say that the dry raw material
3 that goes to the pulper is mixed with the RBW and
4 WEL-3 to create the initial slurry.

5 Q. Okay.

6 A. That in turn goes to each one of the
7 three presses in sequence.

8 Q. The rich brown water and the WEL-3
9 both contain solubles that are extracted from the
10 tobacco material?

11 MR. NUNLEY: Objection as to form.
12 Compound question.

13 Q. Does the rich brown water contain
14 solubles extracted from the tobacco material?

15 A. At the point of the third press, yes,
16 I believe that there were tobacco solubles in the
17 rich brown water.

18 Q. And does the WEL-3 contain solubles
19 that were extracted from the tobacco material?

20 A. I believe that is correct.

21 Q. And the solubles that are extracted
22 from tobacco material contain nicotine, don't
23 they?

24 A. I don't know.

25 Q. You don't know? Do you know if

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Darrah - Highly Confidential - Trade Secret

:53:32 nicotine is a soluble?

02:53:34 A. Let me say that I believe nicotine is
02:53:38 soluble in water.

02:53:56 Q. What do you understand to be the
02:54:00 components of the solubles that are extracted?

02:54:02 MR. NUNLEY: Do you want him -- John,
02:54:06 you know, I'll tell you, you can conduct your
02:54:10 investigation, your deposition any way you want,
02:54:14 but I said before and I do believe this is
02:54:16 beneath you.

02:54:30 Q. Mr. Darrah, if nicotine is soluble in
02:54:32 water, then isn't nicotine one of the solubles
54:36 that's extracted from the tobacco?

02:54:36 A. Mr. Payton, I don't know if it was
02:54:38 extracted from the tobacco or not in this
02:54:40 process.

02:54:56 Q. Do you know if Philip Morris in the
02:55:04 course of the RL process took measurements to
02:55:10 determine the nicotine level at any point in the
02:55:10 process?

02:55:12 A. No, I don't.

02:55:14 Q. Do you know if Philip Morris in the
02:55:16 course of the RL process took measurements to
02:55:20 determine the alkaloid level at any point in the

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1 Darrah - Highly Confidential - Trade Secret

2 :55:22 process?

3 02:55:26 A. No, I don't.

4 02:55:28 Q. Do you know that or if nicotine is an
5 02:55:28 alkaloid?

6 02:55:30 A. No, I don't.

7 (Darrah Exhibit 8 for
8 identification, Philip Morris interoffice
9 correspondence from A. Dixon to S. Darrah dated
10 January 21, 1991.)

11 02:56:22 Q. Mr. Darrah, you have just been handed
12 02:56:26 a one-page document dated January 21, 1991, a
13 02:56:30 Philip Morris interoffice correspondence from A.
14 :56:34 Dixon to S. Darrah. It has production number PA
15 02:56:44 412888 or 2030013912. The subject is capital
16 02:56:48 appropriation request, WEL clean up system, Park
17 02:56:48 500.

18 02:56:50 Do you know an A. Dixon?

19 02:56:52 A. Yes, I do.

20 02:56:52 Q. Who is that?

21 02:56:56 A. That is Ms. Audrey Dixon.

22 02:56:58 MR. NUNLEY: Mr. Payton, is there any
23 02:57:00 reason not to identify the document by exhibit
24 02:57:00 number?

25 02:57:00 MR. PAYTON: I did.

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2058447870

1 Darrah - Highly Confidential - Trade Secret

2 :57:02 MR. NUNLEY: For the record?

3 02:57:06 MR. PAYTON: I'm sorry. This is

4 02:57:14 Darrah 8.

5 02:57:16 MR. NUNLEY: That's part of my have
6 02:57:22 confusion. We haven't been identifying them.

7 02:57:24 MR. BROWN: 8 it is.

8 02:57:26 MR. PAYTON: I appreciate that. I
9 02:57:28 had thought I had done that.

10 02:57:46 Q. Who is Audrey Dixon?

11 02:57:46 A. I believe at this time she was the
12 02:57:50 general manager of the processing plants.

13 02:57:56 Q. And the processing plants included
14 02:57:58 the Park 500 and the BL facility?

15 02:57:58 A. That is correct.

16 02:58:06 Q. Do you remember this request?

17 02:58:10 A. I have a vague recollection of the
18 02:58:10 request.

19 02:58:16 Q. Do you remember if you approved it?

20 02:58:20 A. Well, Mr. Payton, let me say this. I
21 02:58:22 don't know if I approved it or not, but if I had
22 02:58:26 an ROI of 19.2 percent and having a five-year
23 02:58:28 payback period on this, just reading this, I
24 02:58:30 can't see that I would not approve it. That
25 02:58:32 would be a stupid thing to do.

MANHATTAN REPORTING CORP.

2058447871

1 Darrah - Highly Confidential - Trade Secret

:58:32 2 So I am going to be hypothetical and
02:58:34 3 say, yes, I think I did approve this.

02:58:58 4 Q. Mr. Darrah, do you or can you
02:59:00 5 describe the difference in operations between
02:59:06 6 lines 1 and 2 and line 3 at Park 500?

02:59:12 7 Let me focus a little bit more on
02:59:20 8 this. This capital request relates to something
02:59:24 9 that appears to be specific to line 3. That's
02:59:30 10 how it identifies itself. And I'm asking if you
02:59:36 11 can tell me what is unique about line 3 that this
02:59:40 12 request is focusing on, if you can do it.

02:59:42 13 A. I'm not sure I can do it.

03:00:12 14 Q. Do you know if prior to this request,
03:00:16 15 if we assume it was approved, do you know if
03:00:18 16 prior to this request line 3 used rich brown
03:00:22 17 water in the cleansing part of the process?

03:00:28 18 A. I don't know to that level of detail,
03:00:30 19 Mr. Payton.

03:01:16 20 Q. Do you know what thick size is?

03:01:24 21 A. Thick size. I have an image in my
03:01:26 22 mind of what it is, but as far -- again, as a
03:01:28 23 generic term to describe part of the process at
03:01:28 24 Park 500, no.

03:02:04 25 Q. I'm going to show you a document that

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1 Darrah - Highly Confidential - Trade Secret

2 we have just marked Darrah Number 9. It's a
3 one-page document dated January 23, 1991. Philip
4 Morris interoffice correspondence. Again, it's
5 from A. Dixon to you. The subject is capital
6 appropriation request, thick size clean up. It
7 has a production number PA 342127 or 2030310845.

8 (Darrah Exhibit 9 for
9 identification, one-page Philip Morris
10 interoffice correspondence from A. Dixon to Mr.
11 Darrah dated January 23, 1991.)

12 Q. Why don't you take a look at this and
13 see if this refreshes your recollection at all
14 about this request.

15 MR. NUNLEY: It's been marked as
16 Darrah Number 9.

17 MR. PAYTON: I said that, yes.
18 (Witness complies.)

19 A. I understand your question about
20 thick size and the application at this stage of
21 the process. Yes, I do understand it.

22 Q. Do you remember this request?

23 A. Not specifically.

24 Q. It's my understanding, and I'll just
25 represent to you, Mr. Darrah, that this request

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Darrah - Highly Confidential - Trade Secret

04:30 2 was not approved, I believe it was withdrawn,
03:04:32 3 whatever its merits look like to you now, I don't
03:04:36 4 think you took any action on it. Do you know how
03:04:44 5 or if the thick size problem was solved?

03:04:46 6 A. No, I don't.

03:05:56 7 Q. In the RL process, one stage in the
03:06:02 8 process is to remove the potassium nitrate; is
9 that correct?

03:06:06 10 A. I believe so.

03:06:08 11 Q. Do you know why the potassium nitrate
03:06:10 12 is removed?

03:06:10 13 A. No, I do not.

07:02 14 Q. I asked you a few questions about the
03:07:04 15 description of the size batch prep operation that
03:07:10 16 is in Darrah 2. I'm going to read you the little
03:07:12 17 description. You can look back if you want, but
03:07:14 18 it's one sentence, and I've already read it to
03:07:16 19 you.

03:07:18 20 It is "After the flavors," and it
03:07:20 21 refers here to "Tobacco extracts are mixed and
03:07:24 22 sampled to ensure proper composition, then they
03:07:28 23 are stored and supplied when needed for applying
03:07:28 24 to the base web sheet."

03:07:32 25 Do you know how long the size is

MANHATTAN REPORTING CORP.

2058447874

1 Darrah - Highly Confidential - Trade Secret
00:07:32 2 stored?

03:07:36 3 A. I don't remember the time frames that
03:07:36 4 we had.

03:07:44 5 Q. Do you remember the maximum length of
03:07:46 6 storage time that would be permissible for the
03:07:50 7 size? Even in rough terms.

03:07:52 8 A. I don't know. I don't remember.

03:08:42 9 Q. Now, Mr. Darrah, do you know if the
03:08:52 10 size from line 1 is ever transported and used in
03:08:58 11 the line 2 size operation?

03:08:58 12 A. No, I don't.

03:09:28 13 Q. Do you know if in the course of the
03:09:38 14 RL process from time to time what you've been
03:09:42 15 referring to as the base web is sometimes either
03:09:48 16 thrown away or returned to the pulper tank?

03:09:50 17 A. If my memory serves me right, in line
03:09:56 18 1 at Park 500, that if we had during a startup --
03:09:58 19 we were generating base web off the Yankee dryer,
03:10:00 20 and I think it fell on a conveyor, and the
03:10:04 21 conveyor would move it out onto the floor, that
03:10:06 22 we would take that base web and then put it back
03:10:10 23 through the broke pulper, after we had the base
03:10:12 24 web running through the tunnel dryers going to
03:10:18 25 the size press; so to my recollection, that we

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00:10:24 2 would recycle the base web, primarily on startup
03:10:26 3 after we had a sheet break, so to speak, or it
03:10:30 4 was on a fresh startup from a plant shutdown.

03:10:34 5 Q. Were there occasions where the base
03:10:42 6 web would be sent back to the pulper because of
03:10:44 7 low soluble levels?

03:10:48 8 A. I don't remember that occurring.

03:10:52 9 Q. Or low DNCEL levels?

03:10:54 10 MR. NUNLEY: John, I don't think you
03:10:56 11 would have DNCEL on base web.

03:10:58 12 A. That's --

00:11:00 13 Q. I didn't mean that. I mean because
00:11:06 14 there was not enough DNCEL to create sized sheet
03:11:08 15 or tobacco sheet, as is your reference to the
03:11:10 16 finished product.

03:11:14 17 A. No, I don't remember us generating
03:11:18 18 wasted base web just because we didn't have size
03:11:20 19 at the size press ready to make the tobacco
03:11:20 20 sheet.

03:12:12 21 Q. Mr. Darrah, is it your understanding
03:12:14 22 that the soluble content of the dry raw materials
03:12:18 23 varied over time?

03:12:20 24 A. I don't know, Mr. Payton.

00:12:30 25 Q. Was the final product that came out

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1 Darrah - Highly Confidential - Trade Secret
2 of Park 500, RL or whatever the terminology --
3 what is the terminology? What would you refer to
4 it as?

03:12:40 5 A. RL sheet.

03:12:44 6 Q. RL sheet. Is the final product that
03:12:50 7 comes out, RL sheet, is that a product that was
03:12:52 8 uniform?

03:12:54 9 A. To the best of our ability to
03:12:56 10 manufacture it that way.

03:13:18 11 Q. And the final product, RL sheet, was
03:13:22 12 uniform, whether or not the incoming materials
03:13:24 13 were uniform?

03:13:26 14 MR. NUNLEY: Well, John, your
03:13:28 15 preamble question said he didn't know. Your
03:13:30 16 question I think assumes something that's not
03:13:34 17 established in this deposition. Unless you want
03:13:38 18 to represent that they were not uniform.

03:13:40 19 MR. PAYTON: Let me just ask again.
03:13:42 20 I'll just ask one more time, and if that's where
03:13:44 21 it is, I'll leave it alone.

03:13:48 22 Q. Mr. Darrah, are you saying that you
03:13:54 23 do not know whether or not the soluble content of
03:14:00 24 the dry raw materials that go into the first
03:14:06 25 stage of the RL process varied over time?

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03:14:08 2 A. I saw no data or no information that
03:14:10 3 would say that happened or did not happen.

03:14:18 4 Q. Do you know if Philip Morris measured
03:14:22 5 the dry raw materials to determine soluble
03:14:24 6 content?

03:14:24 7 A. No, I don't.

03:14:38 8 Q. Did Philip Morris measure the SEL,
03:14:44 9 CEL and DNCEL to determine soluble content?

03:14:46 10 A. I don't know, Mr. Payton.

03:14:52 11 Q. Do you know if the final sheet, the
03:14:54 12 RL sheet, was measured to determine soluble
03:14:54 13 content?

03:14:56 14 A. I don't know that either.

03:15:24 15 Q. RLTC, is that a reference to RL with
03:15:26 16 top casing? Or do you know?

03:15:30 17 A. I don't know what the TC stands for.

03:15:34 18 Q. Do you know what top casing is?

03:15:36 19 A. I know what top casing is in
03:15:38 20 reference to the cigarette manufacturing
03:15:40 21 process.

03:15:46 22 Q. Well, in reference to the cigarette
03:15:48 23 manufacturing process, what is top casing?

03:15:50 24 A. Top casings are flavorings that are
03:15:56 25 added to burley tobacco following their drying

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:16:00 2 within a Proctor & Schwarz dryer, and just
03:16:02 3 subsequent to their being added as part of the
03:16:06 4 total blend of strip tobaccos prior to cutting.
03:16:08 5 It's a primary process function.

03:16:34 6 MR. NUNLEY: Is Schwarz
03:16:36 7 S-c-h-w-a-r-t-z?

03:16:40 8 THE WITNESS: I think it's
03:16:48 9 S-c-h-w-a-r-z. Is that right, Mr. Payton?

03:16:50 10 MR. PAYTON: That's what I think,
03:16:50 11 yes.

12 (Darrah Exhibit 10 for
13 identification, Philip Morris interoffice
14 correspondence from J. E. Bickett and S. M.
15 Hayward to N. O. Fowler, R. A. Lively, D. Milby
03:18:00 16 and W. R. Moore.)

03:18:06 17 Q. Mr. Darrah, you've just been handed
03:18:08 18 what's been marked Darrah Exhibit 10, a
03:18:12 19 three-page document dated February 27, 1987,
03:18:14 20 Philip Morris interoffice correspondence. It's
03:18:18 21 from J. E. Bickett and S. M. Hayward to
03:18:24 22 Messrs. N. O. Fowler, R. A. Lively, D. Milby and
03:18:26 23 W. R. Moore.

03:18:28 24 It has production numbers -- actually
03:18:30 25 this one only has your production number,

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1 Darrah - Highly Confidential - Trade Secret
03:18:40 2 2031024095, 4096, and 4097.

03:18:42 3 Am I right that you have not seen
03:18:44 4 this document before?

03:18:46 5 A. That is correct. I have not seen the
03:18:48 6 document.

03:19:02 7 Q. Can you tell -- the subject of this
03:19:06 8 document is 1987 PM U.S.A. oven volatile
03:19:12 9 adjustment. Do you know what that means, "oven
03:19:12 10 volatile"?

03:19:16 11 A. I know what the term "oven volatile"
03:19:16 12 means.

03:19:18 13 Q. What is it?

03:19:22 14 A. I believe it is those elements that
03:19:28 15 are included in tobacco that will volatize when
03:19:32 16 put under a certain amount of heat for a certain
03:19:34 17 amount of time, and be pulled off tobacco, so to
03:19:38 18 speak.

03:19:38 19 Q. And that just means it will become a
03:19:40 20 vapor, is that right?

03:19:40 21 A. That's correct. The majority of
03:19:40 22 which is water.

03:19:42 23 Q. It will just evaporate, you mean, at
03:19:42 24 some temperature?

03:19:42 25 A. That's right.

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2 MR. NUNLEY: Mr. Payton, let me just
3 say that this document, perhaps you'll tell me
4 otherwise, but it appears to be a manufacturing
5 document. It further appears to be outside the
6 1/1/88 to 3/24/94 period. And it would also be a
7 document, I believe, when Mr. Darrah was in
8 Europe.

9 MR. PAYTON: It is a document when he
10 was in Europe, I agree with that.

11 MR. NUNLEY: You will also agree that
12 it's outside the manufacturing portion of
13 discovery time frame.

14 MR. PAYTON: It's before 1988. I'll
15 agree with that, too. But I'll say this. If in
16 fact Philip Morris manufactured Liggett brands
17 for domestic distribution in the United States in
18 1987, I think it's open for discovery.

19 MR. NUNLEY: Well, all I can tell you
20 there, and we've had this discussion before, to
21 my knowledge that didn't occur.

22 MR. PAYTON: That's all I'm asking
23 him about.

24 MR. NUNLEY: You have questioned lots
25 of witnesses, and I believe the testimony has

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03:21:08 2 been that that hasn't occurred. If you have
03:21:12 3 reason to believe that it did occur, I'll be
03:21:14 4 happy to take that and try to track it down for
03:21:16 5 you. I've made that offer before.

03:21:18 6 MR. PAYTON: I have -- I've made that
03:21:20 7 request, and I haven't gotten an answer back. I
03:21:22 8 don't intend to ask this witness anything other
03:21:24 9 than what I just said.

03:21:26 10 MR. NUNLEY: I can't believe you said
03:21:28 11 you haven't gotten an answer back.

03:21:30 12 MR. PAYTON: The request I made to
03:21:34 13 you and David Murphy, which happened at your
03:21:36 14 office just before the --

03:21:36 15 MR. NUNLEY: I know when the meeting
03:21:38 16 was, yes.

03:21:38 17 MR. PAYTON: I never got an answer
03:21:40 18 back.

03:21:40 19 MR. NUNLEY: John, I told you at that
03:21:42 20 meeting --

03:21:42 21 MR. PAYTON: You were going to go
03:21:46 22 off -- you said that you did not appreciate that
03:21:50 23 we were asking about Philip Morris actually
03:21:56 24 manufacturing and distributing cigarettes not
03:21:58 25 necessarily under the Liggett brand name or

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2 giving them back to Liggett and letting Liggett
3 sell them, and you were going to go off and get
4 me an answer.

5 MR. NUNLEY: John, what I told you
6 was it was not my understanding that we sold any
7 Liggett --

8 MR. PAYTON: That's what I meant, I'm
9 sorry. What I asked was, would you look into
10 whether or not Philip Morris manufactured them,
11 and they were distributed by anyone in the United
12 States, including Liggett, not that Philip Morris
13 sold them in the United States.

14 MR. NUNLEY: We've had how many
15 depositions since that meeting? And has anyone
16 suggested to you otherwise?

17 MR. PAYTON: This is the only person
18 I've asked since then. And I understand
19 Mr. Killory asked one other witness about that.
20 But I haven't asked every deponent. And I didn't
21 intend to go -- this is the only reason I'm
22 asking about this document, and I'm going to
23 accept his answer.

24 MR. NUNLEY: Well, I still stand on
25 the position that this is outside the scope of

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00:22:52 2 manufacturing discovery. You can ask the
03:22:54 3 question and he can certainly answer.

03:22:56 4 MR. PAYTON: All right.

03:23:02 5 MR. NUNLEY: I think it's been asked
03:23:04 6 and answered before today, in this deposition.

03:23:08 7 MR. PAYTON: It was asked in this
03:23:10 8 deposition, and I didn't have the document, it
03:23:12 9 wasn't actually in this room when I asked the
03:23:16 10 question, and I simply went upstairs and got the
03:23:16 11 document.

03:23:26 12 Q. Mr. Darrah, I want you to take a look
03:23:34 13 at this document with me. The document is -- the
03:23:38 14 subject is 1987 PM U.S.A. oven volatile
03:23:42 15 adjustment. And the subject says, "Domestic king
03:23:48 16 size soft pack and 100s OV increase." Do you see
03:23:48 17 that?

03:23:50 18 A. Mm-hmm. Yes, I do.

03:23:58 19 Q. And in the text, the last line of
03:24:00 20 text before we get the 1, 2 and 3, it says "The
03:24:04 21 brands affected by this specification revision
03:24:08 22 are," and number 1 is "all PM U.S.A. soft pack
03:24:12 23 regular brands," and number 2 is "exceptions."

03:24:14 24 Do you see that?

03:24:14 25 A. Mm-hmm. Yes, I do.

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2 Q. And exception B refers to the Liggett
3 brands, L&M, Lark, Chesterfield, and Eve.

4 The question I have is whether or not
5 the Liggett brands are domestic brands, as the
6 subject seems to indicate, or is this saying
7 something else, or do you know?

8 MR. NUNLEY: Objection to your
9 characterization of the document. It speaks for
10 itself. I think the question posed is, if I
11 understand it, did Philip Morris manufacture and
12 sell domestically Liggett brands.

13 Q. Did it manufacture for domestic
14 consumption, whether it sold them or not, Liggett
15 brands?

16 A. Well, I think, Mr. Payton, we talked
17 about this earlier this morning.

18 Q. We did.

19 A. I thought that I answered it then. I
20 have no knowledge about what happened back here
21 in 1987. From the time frame that I came back to
22 the United States, late 1989, until I left the
23 company in March of 1995, I had no knowledge of
24 any manufacturing of Liggett brands for sale or
25 distribution within the United States.

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2 I might also point out, and as I

3 said, I don't know about this here, but these

4 brands were manufactured for export.

5 Q. Which ones?

6 A. L&M, Lark, Chesterfield and Eve.

7 Q. These brands were certainly

8 manufactured for export during this time frame,

9 because you are aware of that, being at Philip

10 Morris EEC?

11 A. Yes, that's correct.

12 Q. You don't know if during this same

13 time frame they were manufactured and were

14 distributed by some other company in the United

15 States, or do you know?

16 A. I have no knowledge of that.

17 Q. Do you see C, where it refers to

18 "Virginia Slims Lights Charcoal Filter will not

19 be revised since it is produced with Lark

20 filler," do you see that?

21 A. Yes, I do.

22 Q. Is Virginia Slims Lights a

23 domestically distributed and sold cigarette?

24 A. Virginia Slims Lights is. Virginia

25 Slims Lights with a charcoal filter is not.

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03:26:42 2 Q. And was it then? Or do you know?

03:26:44 3 A. I have no way of knowing.

03:27:18 4 THE VIDEO OPERATOR: We're going off
03:27:24 5 the record. The time on the screen is 3:27:23.

03:34:02 6 (A recess was taken.)

03:54:18 7 THE VIDEO OPERATOR: This is
03:54:20 8 videotape number 3, the continuation of the
03:54:24 9 deposition of Mr. Darrah. Today is July 14th,
03:54:30 10 1995. The time is 3:54:23. You're on the
03:54:32 11 record.

03:54:40 12 Q. Mr. Darrah, is RL an artificial
03:54:40 13 product?

03:54:42 14 A. An artificial product?

03:54:44 15 Q. Yes.

03:54:48 16 A. No, I wouldn't say it's an artificial
03:54:48 17 product.

03:54:50 18 Q. How would you describe it?

03:54:52 19 MR. NUNLEY: Objection as to form.
03:54:56 20 In what context, John?

03:55:00 21 Q. It's not a natural product, is it?

03:55:04 22 A. Let me say that I think it's made out
03:55:08 23 of natural materials.

03:55:14 24 Q. RL contains, according to Philip
03:55:18 25 Morris documents, about 10 percent chemical

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additives. Do you agree with that?

A. I don't know what the percent of additives is to the product itself.

Q. Do you accept my representation that the documents say 10 percent?

MR. PAYTON: I don't think you'll disagree with me, Mr. Nunley. I'll get the documents.

MR. NUNLEY: I don't think it's different than milk or anything else. What is the point, that if it contains 10 percent chemicals it's not a natural product?

Q. If it contains 10 percent chemical additives, your statement that it contains -- that it is made out of natural materials, 10 percent of it at least is not natural.

A. I'll accept that your premise is right that it has 10 percent of nonnatural materials. Then I would say it is a 90 percent natural product, then.

Q. Is RL a manufactured product?

A. Yes, it is.

Q. The base web which is referred to in some of the documents we looked at as the tobacco

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2 sheet, do you consider that to be a natural
3 product?

03:56:44 2
03:56:46 3
03:56:48 4 A. I would consider the base web to be a
03:56:50 5 natural product also.

03:56:52 6 Q. A manufactured natural product?

03:56:52 7 A. Yes.

03:56:54 8 Q. A product manufactured from natural
03:56:56 9 materials?

03:56:56 10 A. Yes.

11 (Darrah Exhibit 11 for
12 identification, Philip Morris Incorporated's
13 answers to American Broadcasting Companies' first
14 set of interrogatories.)

03:57:32 15 Q. Mr. Darrah, you've just been handed
03:57:34 16 what's been marked Darrah Exhibit 11. It is
03:57:38 17 Philip Morris Incorporated's answers to American
03:57:40 18 Broadcasting Companies' first set of
03:57:42 19 interrogatories.

03:57:46 20 And it consists of a 27 -- I mean,
03:57:54 21 I'm sorry, it consists of 17 pages of answers.
03:58:00 22 It has an attached addendum that I believe is 27
03:58:04 23 pages long, and it has some exhibits attached to
03:58:06 24 it.

03:58:12 25 Have you ever seen this before? Just

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:58:14 quickly turn through it.

03:58:18 (Witness complies.)

03:58:44 A. No, I've not seen this before.

03:58:46 Q. Did you look at the addendum as
03:58:46 well?

03:58:50 A. I just briefly went through -- just
03:58:52 scanned the pages very quickly.

03:58:56 Q. You didn't recognize anything in the
03:58:58 addendum as something you had seen before?

03:58:58 A. No.

03:59:02 Q. Did you look at the exhibits? There
03:59:08 are Exhibits A through J. I just want you to
:59:12 look at the exhibits and see if you have seen any
03:59:12 of the exhibits before.

03:59:44 A. Mr. Payton, I've seen some block flow
03:59:46 diagrams of our manufacturing process before. I
03:59:50 don't specifically recognize these as being those
03:59:52 that I have seen. But there are elements in here
03:59:54 that I have seen before, and -- as far as the
03:59:56 graphical representations are concerned.

03:59:58 MR. NUNLEY: Mr. Payton, something
04:00:00 just occurred to me as I look at these. We sent
04:00:06 you some interrogatory answers late last night.
04:00:10 They should have been marked trade secret, and I

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00:12 2 don't believe that they were.

04:00:12 3 I don't want to stop the deposition,
04:00:16 4 but I wonder if I could ask Mr. Brown to call
04:00:22 5 Mr. Goldblatt and tell him it should have been
04:00:24 6 marked trade secret, and it will be my intention
04:00:26 7 to do so just as soon as I get back to the
04:00:28 8 office. I appreciate that. Thank you.

04:00:28 9 MR. BROWN: They were sent last
04:00:30 10 night?

04:00:32 11 MR. NUNLEY: Yes, about 11:30.

04:00:34 12 MR. BROWN: Directly to Washington?

04:00:38 13 MR. NUNLEY: To Craig Goldblatt
(00:40 14 here.

04:00:42 15 Q. Now, Mr. Darrah, you were telling me
04:00:44 16 that you don't recall seeing any one of these
04:00:48 17 specific exhibits, but what they're describing is
04:00:50 18 familiar to you, and you may have seen a similar
04:00:52 19 description on a similar flow chart?

04:00:54 20 A. What I'm saying is that this method
04:00:58 21 of graphically representing a process block flow
04:01:00 22 diagram I have seen utilized before.

04:01:14 23 Q. Let me ask you to go to page 9 of the
04:01:20 24 addendum. It is the page that contains the
04:01:26 25 description of the RL process.

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04:01:28 2 A. I have that page.

04:01:42 3 Q. I'm asking you about only the first
04:01:46 4 paragraph on the page, numbered paragraph 2, RL
04:01:50 5 process. You can read the paragraph if you
04:01:52 6 like. I have a few questions.

04:01:54 7 A. Okay. I've read the paragraph.

04:01:58 8 Q. This paragraph refers to a reduction
04:02:08 9 of the nicotine naturally occurring in tobacco as
04:02:10 10 a result of the RL process. Do you see that?

04:02:10 11 A. Yes, I do.

04:02:14 12 Q. Before you read that, were you aware
04:02:20 13 of nicotine being lost in the RL process?

04:02:20 14 A. No, I was not.

04:02:26 15 Q. Not at all, just weren't aware one
04:02:26 16 way or the other?

04:02:26 17 A. Right. That is correct.

04:02:54 18 Q. In the RL process, when the solubles
04:03:00 19 are extracted, one of the solubles, the potassium
04:03:06 20 nitrate, is actually removed, I don't know, it's
04:03:08 21 sold as fertilizer or something, is that right?

04:03:08 22 A. It is my understanding that it is
04:03:10 23 being sold as fertilizer.

04:03:16 24 Q. Philip Morris could at that same
04:03:20 25 point in the process remove the nicotine that is

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2 in the solubles, couldn't it?

04:03:24 3 A. I don't know.

04:03:54 4 Q. Let me ask that you go to page 25 of
04:03:54 5 the addendum.

04:03:56 6 (Witness complies.)

04:04:02 7 Q. There's a chart, and I want to ask
04:04:06 8 you some questions only about the chart. And if
04:04:08 9 you take a look at the chart, it is identifying
04:04:14 10 different processes necessary to making a
04:04:20 11 cigarette, BL, RL, ES, IS, expanded tobacco. It
04:04:24 12 shows alkaloid level coming in, alkaloid level
04:04:28 13 going out, alkaloid level reduced.

:04:28 14 Do you see that?

04:04:30 15 A. Yes, I do.

04:04:32 16 Q. Were you aware of any of these
04:04:34 17 reductions in alkaloid levels?

04:04:36 18 A. No, I was not.

04:04:44 19 MR. BROWN: Craig Goldblatt was
04:04:46 20 informed that they should have been but were not
04:04:50 21 marked trade secret, and he will ensure that all
04:04:52 22 copies that we have are marked trade secret.

04:04:54 23 MR. NUNLEY: I appreciate that.
04:04:54 24 Thank you very much.

04:05:32 25 Q. Does Philip Morris control the level

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1 Darrah - Highly Confidential - Trade Secret
2 of nicotine in its finished cigarettes?

04:05:38 3 A. To my knowledge, no, they don't.

04:05:54 4 Q. Nicotine level is not a specification
04:05:56 5 for a cigarette?

04:06:02 6 A. The nicotine in by itself is not
04:06:04 7 necessarily a specification for a cigarette.

04:06:08 8 Q. What was the qualification there, "in
04:06:10 9 by itself," what did you mean?

04:06:12 10 A. Well, there is a target that we
04:06:16 11 utilize from a blending standpoint of the tar
04:06:20 12 nicotine ratio. And the nicotine follows
04:06:24 13 basically what the tar level will be.

06:30 14 Q. Your understanding is that nicotine
04:06:30 15 follows tar?

04:06:32 16 A. That's correct.

04:06:34 17 Q. What does that mean?

04:06:36 18 A. Well, tar is a by-product of the
04:06:42 19 ~~pyrolysis~~ of a tobacco cigarette.

04:06:44 20 Q. ~~"Paralysis"~~ ^{pyrolysis} means burning?

04:06:46 21 A. Burning. My understanding is, as we
04:06:48 22 design the products, we design the products for
04:06:50 23 tar, tar related to taste and impact and so forth
04:06:54 24 from the consumer acceptability standpoint.

04:06:54 25 The smoked nicotine that's inherent

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04:06:58 2 in the tobaccos that provide that tar, there is a
04:07:00 3 fairly, I'm going to say, constant ratio of about
04:07:04 4 ten to one. I think it will vary depending upon
04:07:06 5 the taste direction and so forth, somewhat.

04:07:08 6 But there is a ratio of about ten to
04:07:12 7 one, tar to smoked nicotine. As a cigarette is
04:07:14 8 designed to give a certain delivery of tar, the
04:07:16 9 nicotine number follows that.

04:07:22 10 Q. Which means that if you know what --
04:07:24 11 well, strike that. There is a specification for
04:07:26 12 tar for any particular brand of cigarettes?

04:07:30 13 A. Yes, there is. We are required to
04:07:32 14 print tar, as you know, on our packs of
04:07:34 15 cigarettes and advertising and so forth.

04:07:36 16 Q. Well, you print tar and nicotine?

04:07:38 17 A. Yes, it's required to print both.

04:07:40 18 Q. Are both of them specifications?

04:07:44 19 MR. NUNLEY: You mean internal
04:07:46 20 specifications or government specifications?

04:07:48 21 MR. PAYTON: Well, either one.

04:07:52 22 Q. Clearly both of them are on the
04:07:52 23 cigarette pack.

04:07:54 24 A. Yes.

04:07:58 25 Q. Are both of them internal Philip

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:08:00 2 Morris specifications for a cigarette?

04:08:02 3 A. No. We use basically tar as the
04:08:02 4 controlling specification.

04:08:04 5 Q. Okay.

04:08:04 6 A. For the product. And we control the
04:08:06 7 tar.

04:08:10 8 Q. And by controlling the tar, you also,
04:08:12 9 since tar follows -- nicotine follows tar?

04:08:12 10 A. Yes.

04:08:14 11 Q. That also controls the nicotine?

04:08:16 12 A. The nicotine will have a
04:08:18 13 corresponding adjustment to it also as tar is
04:08:20 14 moved up or down.

04:08:24 15 Q. Did you agree with me that if you
04:08:26 16 control for the tar you're controlling for the
04:08:26 17 nicotine?

04:08:28 18 MR. NUNLEY: I don't think he did
04:08:28 19 agree, I don't know.

04:08:30 20 MR. PAYTON: That's why I'm asking.

04:08:30 21 A. No, I did not agree with that.

04:08:32 22 Q. Why not?

04:08:34 23 A. Because it's not a control element,
04:08:34 24 that we're trying to control nicotine. We're
04:08:36 25 controlling tar. A result of controlling tar is

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1 Darrah - Highly Confidential - Trade Secret

01:08:40 2 that the nicotine content on a per puff basis of
04:08:42 3 the total cigarette will also move at about a ten
04:08:42 4 to one ratio.

04:09:04 5 Q. Are you saying that in controlling
04:09:10 6 for tar, that will control for nicotine, but your
04:09:14 7 primary interest is in the tar?

04:09:18 8 A. No, that's not what I said. I said
04:09:20 9 that we control tar levels in our products. And
04:09:22 10 by controlling the tar levels, there is a result
04:09:28 11 of a corresponding reduction or increase in
04:09:30 12 nicotine, depending upon the way the tar is
04:09:32 13 moving. And that relationship, as I said, is
04:09:34 14 about ten to one.

04:09:48 15 Q. Are you aware of Philip Morris
04:09:58 16 efforts to make a series of cigarettes that could
04:10:04 17 have the same tar level but varying nicotine
04:10:06 18 levels?

04:10:22 19 A. No, I'm not. Excuse me. Let me --
04:10:24 20 let me not retract that but just -- something
04:10:28 21 just reminded me, I believe that some of the
04:10:32 22 development products that we did for the ART
04:10:36 23 facility, that we did look at the reduction in
04:10:44 24 nicotine at various levels in the ART facility.

04:10:46 25 I do not remember, however, if the

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2 tar levels of those products were also at the
3 same level. So that we did have reductions in
4 the amount of nicotine extracted, if you will, to
5 use that term, through the ART facility.

6 I don't remember if we had the same
7 tar levels for each of those different nicotine
8 levels.

9 Q. Are you familiar with the term
10 "nicotine delivery"?

11 A. I've heard the term used.

12 Q. Have you ever heard the term used
13 within Philip Morris?

14 A. No, I have not heard it within Philip
15 Morris.

16 Q. Is nicotine one of the factors that
17 keeps smokers smoking?

18 A. You're asking for my opinion?

19 Q. Yes.

20 A. I don't think so.

21 Q. Have you seen any research by Philip
22 Morris on the subject of whether or not nicotine
23 is one of the factors that keeps smokers
24 smoking?

25 A. No, I have not.

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04:12:14 2 Q. Have you had any conversations with
04:12:16 3 persons at Philip Morris on the subject of
04:12:20 4 whether or not nicotine is one of the factors
04:12:24 5 that keeps smokers smoking?

04:12:24 6 A. No, I have not.

04:12:30 7 Q. Do you know Dr. Dunne?

04:12:32 8 A. No, I do not know Dr. Dunne.

04:12:34 9 Q. Do you know who he is?

04:12:34 10 MR. NUNLEY: Are you speaking about
04:12:36 11 Dr. William Dunne?

04:12:36 12 MR. PAYTON: I am.

04:12:42 13 A. When you said the name, it's somewhat
04:12:44 14 familiar, I think something I read in the
04:12:46 15 newspaper about a Dr. Dunne, and I've forgotten
04:12:50 16 which context of the article -- I think it had to
04:12:52 17 do with addiction and nicotine and so forth.

04:13:10 18 Q. Dr. Bourlas, who we mentioned briefly
04:13:14 19 I think this morning, who was he again?

04:13:18 20 A. Dr. Bourlas was the director of
04:13:20 21 research and development for Philip Morris in the
04:13:26 22 EEC and worked for me in that capacity for a
04:13:30 23 period of -- I want to say two to three years
04:13:30 24 when I was in Europe.

04:13:32 25 Q. This is in the mid-'80s?

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04:13:32 2 A. Yes, that's correct.

04:13:34 3 Q. Do you recall having any conversation
04:13:42 4 with Dr. Bourlas about nicotine research that
04:13:44 5 Philip Morris had conducted about nicotine
04:13:48 6 transfers of smoke?

04:13:50 7 A. I have no recollection of discussions
04:13:52 8 with him about that, Mr. Payton.

04:13:54 9 Q. About nicotine deliveries?

04:14:00 10 A. Well, let me say, as far as nicotine
04:14:02 11 deliveries, if you're talking about in the design
04:14:06 12 of products, it was Mr. Bourlas who was
04:14:08 13 responsible for product development. Yes, we did
04:14:12 14 have discussions about tar and smoking nicotine
04:14:14 15 deliveries through the normal evolution of
04:14:14 16 product development.

04:14:16 17 Q. In that context --

04:14:18 18 MR. NUNLEY: Let me just find out,
04:14:22 19 was Mr. Bourlas -- what Philip Morris entity was
04:14:24 20 Mr. Bourlas associated with at that time?

04:14:28 21 THE WITNESS: Philip Morris EEC.

04:14:28 22 MR. NUNLEY: John, I think these are
04:14:32 23 export issues.

04:14:32 24 MR. PAYTON: No, they're not. The
04:14:36 25 research that I'm aware of, and I'm looking at

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04:14:38 2 some of it right now, are general research papers
04:14:42 3 that he is either copied on -- but they're out of
04:14:46 4 the Philip Morris research center on subjects
04:14:46 5 like this.

04:14:48 6 Now, he may not be aware of them, and
04:14:50 7 he may be telling me about something else, but
04:14:52 8 I'm just telling you I have a good faith basis to
04:14:56 9 know that Dr. Bourlas is in the loop on these
04:14:56 10 things.

04:14:56 11 MR. NUNLEY: But my point is,
04:15:00 12 Mr. Darrah was receiving that for purposes of
04:15:04 13 development of a cigarette for EEC. Maybe you
04:15:06 14 can ask Mr. Bourlas about it, but I think it's
04:15:08 15 improper to ask Mr. Darrah about it.

04:15:12 16 Q. Mr. Darrah, in the context in which
04:15:14 17 you just identified conversations you may have
04:15:20 18 had with Mr. Bourlas, what did the term "nicotine
04:15:22 19 delivery" mean?

04:15:28 20 A. I think "nicotine delivery," that
04:15:30 21 term meant the nicotine level in a particular
04:15:32 22 product as it was related to the tar.

04:15:38 23 Q. And did it refer to the level of
04:15:42 24 nicotine in the smoke as opposed to the content
04:15:44 25 of nicotine in the filler?

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04:15:48 2 A. I don't remember exactly the context
04:15:50 3 in which we talked about it.

04:16:24 4 Q. Were you aware of any discussions at
04:16:30 5 Philip Morris about Philip Morris's competitors,
04:16:36 6 including companies that manufactured nicotine
04:16:38 7 patches?

04:16:44 8 A. I'm aware of one discussion on that
04:16:44 9 particular subject.

04:16:46 10 Q. When was that?

04:16:50 11 A. I want to say it was approximately a
04:16:52 12 year to 18 months ago.

04:16:54 13 And it was basically a management
:17:02 14 review that was conducted in Richmond as part of
04:17:04 15 a normal operations meeting, where a gentleman
04:17:06 16 made a general business overview of the nicotine
04:17:10 17 patch companies that were in manufacture at that
04:17:12 18 time, and basically looking at their revenues,
04:17:16 19 their anticipated profits, so on and so forth.

04:17:20 20 Q. Was this discussion about not only
04:17:26 21 nicotine patches but about other nicotine
04:17:34 22 containing products such as nicotine inhalers,
04:17:36 23 aerosols?

04:17:38 24 A. I'm not sure of the specific devices,
04:17:42 25 but I do remember there were other devices that

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17:44 were designed to produce --

04:17:44 Q. Nicotine?

04:17:46 A. -- nicotine that were mentioned in
04:17:46 that business review.

04:17:48 Q. For example, do you recall
04:17:50 Nicorette? It's a chewing gum with nicotine in
04:17:52 it.

04:17:54 A. Yes, I think we also mentioned that,
04:17:54 too.

04:17:56 Q. Was the term "nicotine delivery
04:18:00 devices" used to describe this array of
04:18:02 products?

18:04 A. I don't remember if that term was
04:18:04 used, Mr. Payton.

04:18:18 Q. Was this described as a growing
04:18:20 although small segment of the market?

04:18:24 A. The best of my recollection was that
04:18:30 generally speaking, the overall business results,
04:18:32 the profitability of these companies that were in
04:18:34 this business was not really that solid or
04:18:36 optimistic for the future.

04:18:50 Q. Do you remember who made the
04:18:50 presentation?

04:18:52 A. I think a Dr. Carchman made the

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1 Darrah - Highly Confidential - Trade Secret
2 presentation.

04:18:52 3 Q. Richard Carchman?

04:18:54 4 A. Yes.

04:18:56 5 Q. Do you know Richard Carchman?

04:18:58 6 A. I know of him.

04:19:00 7 MR. NUNLEY: Mr. Payton, if you have
04:19:02 8 a document in front of you, can you give us the
04:19:06 9 date of this discussion?

04:19:14 10 MR. PAYTON: Yes.

04:20:54 11 MR. NUNLEY: I didn't mean to
04:20:56 12 interrupt -- I thought you had the document in
04:20:58 13 front of you.

04:21:02 14 MR. PAYTON: That's fine.

15 (Darrah Exhibit 12 for
16 identification, 1992 through 1996 Philip Morris
17 U.S.A. R&D strategic plan.)

04:23:10 18 Q. Mr. Darrah, you've just been handed
04:23:12 19 what's been marked, it's a monumental, huge
04:23:20 20 document. The 1992 through 1996 Philip Morris
04:23:26 21 U.S.A. R&D strategic plan. It is about a hundred
04:23:28 22 pages of strategic plan and then a number of
04:23:30 23 appendices.

04:23:34 24 A. Yes.

04:23:56 25 Q. And if you turn to page 80 of the

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1 Darrah - Highly Confidential - Trade Secret
2 actual strategic plan, this is the 80th page in
3 here --

04:24:00 2
04:24:00 3
04:24:02 4 THE WITNESS: Excuse me for
04:24:04 5 interrupting. I would just like to ask
04:24:08 6 Mr. Nunley, I understand it's 1992 to 1996, but
04:24:10 7 this contains confidential information about a
04:24:14 8 competitive company to my company at this point
04:24:14 9 in time.

04:24:16 10 Although this was generated some
04:24:18 11 years back, there is a year in this time frame,
04:24:20 12 1996, and there is a year that's going on right
04:24:28 13 now, that I don't know if that information that's
04:24:28 14 in here is something that I should be looking at
04:24:28 15 and talking to you about.

04:24:30 16 Q. Tell you what. I'll direct
04:24:32 17 Mr. Nunley to it, because I believe it is going
04:24:36 18 to contain no information that is sensitive to
04:24:40 19 the extent you've just discussed it. It is all
04:24:42 20 highly confidential.

04:24:46 21 MR. PAYTON: And Chip, I will tell
04:24:48 22 you what I believe is an absolutely fair
04:24:50 23 representation of these plans. This is the 1992
04:24:54 24 plan. They all come out as five-year
04:24:58 25 projections, just because -- but when you look at

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1 Darrah - Highly Confidential - Trade Secret
:25:02 2 it, for example on page 80, you'll see there's
04:25:04 3 nothing in there about any general projections,
04:25:06 4 just what's happening out there.

04:25:14 5 MR. NUNLEY: I don't have a problem.
04:25:16 6 My guess is you don't want him to read the entire
04:25:16 7 document.

04:25:18 8 MR. PAYTON: Oh, no. The section
04:25:22 9 that I want him to read is actually very brief.
04:25:26 10 I believe it is similar to and may be what is
04:25:30 11 turned into a presentation that he sees in a
04:25:32 12 different time frame.

04:25:34 13 Q. I don't believe you've seen this
:25:36 14 document; is that correct, Mr. Darrah?

04:25:36 15 A. No, I haven't.

04:25:40 16 MR. NUNLEY: Why don't you direct
04:25:42 17 him, John, if you have a specific question about
04:25:46 18 specific areas. Is 80 what you plan to ask him
04:25:46 19 about?

04:25:50 20 Q. 80, just so you can see it, begins
04:25:52 21 "New products," and I want him to go on to the
04:25:56 22 last paragraph on page 81, which I believe is the
04:26:00 23 discussion that is right along the lines of the
04:26:02 24 presentation you saw.

04:26:04 25 And if you like, there is a sort of a

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1 Darrah - Highly Confidential - Trade Secret
2 separate pull-out version of this in the
3 appendix, which is not much longer than this.
4 It's strange, but the appendix is sort of the
5 same thing, that is, sort of a separate little
6 presentation piece.

7 MR. NUNLEY: Have you asked him,
8 maybe I missed it, whether he has seen this
9 before?

10 MR. PAYTON: He has not seen this
11 before.

12 MR. NUNLEY: This is sort of the --

13 MR. PAYTON: I'm trying to see --
14 I'll tell you why I'm asking him about this.

15 MR. NUNLEY: I was going to say, this
16 presents to me a little of the same situation as
17 the early document. I guess my question is, did
18 he need to see the document to respond to your
19 questions.

20 MR. PAYTON: I think he does.

21 Q. Mr. Darrah, the reason I want you to
22 look at these few paragraphs, and I'm not sure
23 you need to look any further, but there is a
24 similar few paragraphs in the appendix, is to see
25 if looking at those paragraphs refreshes your

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1 Darrah - Highly Confidential - Trade Secret

04:26:56 2 recollection as to the content of the
04:26:58 3 presentation you saw on these various other
04:27:02 4 products, nicotine containing products, the gum,
04:27:04 5 the aerosol, the inhaler, the patches.

04:27:10 6 A. I think, as I said, I do remember we
04:27:12 7 had -- included in that presentation, rather,
04:27:14 8 that I was talking to you about, Mr. Payton,
04:27:16 9 there was something about nicotine gum,
04:27:18 10 Nicorette, there was something mentioned about an
04:27:24 11 aerosol spray containing nicotine and so forth.

04:27:28 12 Q. Do you remember these companies? Do
04:27:30 13 you see at the bottom of 81 --

04:27:34 14 A. Let me say that I remember the name
04:27:36 15 Ciba Geigy as one.

04:27:38 16 Q. Marion Merrill Dow?

04:27:40 17 A. No, I don't remember that. Ciba
04:27:42 18 Geigy is the only one I remember that comes to
04:27:44 19 mind as far as these names that are on here.

04:27:46 20 Q. Do you see the reference to Nicorette
04:27:48 21 gum actually being a success?

04:28:02 22 A. Let's see. Well, success from the
04:28:06 23 time period of 1984 to 1988.

04:28:06 24 Q. Yes.

04:28:08 25 A. I didn't say what happened from 1988

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1 Darrah - Highly Confidential - Trade Secret

2 to the time the presentation was actually

3 reviewed. So I think it was, as I mentioned to

4 you, sometime between 1994, '93.

5 My question would be what's happened
6 since 1988 to the time I saw the presentation. I
7 would say this is a success that they've had here
8 as far as sales. I don't know, profitability,
9 what's happened to the company. But they've
10 increased sales, according to this data, in the
11 four-year period from \$50 million to \$100
12 million.

13 Q. You recall only being present at one
14 such presentation on these types of products
15 being produced by these companies?

16 A. That's correct.

17 Q. Do you remember who was in the
18 audience, who the presentation was made to?

19 A. Let me say, as I said, it was an
20 operations meeting that was held in Richmond that
21 we would have periodically from time to time, and
22 the normal membership, if you will, of that
23 meeting was Dr. Houghton, myself.

24 It would have been several people
25 from New York. Bill Campbell as the president,

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1 Darrah - Highly Confidential - Trade Secret
:29:14 2 chief executive officer, Philip Morris U.S.A.,
04:29:16 3 normally attended those meetings. Sometimes the
04:29:18 4 head of marketing, head of sales, finance and
04:29:20 5 accounting, human resources from New York would
04:29:22 6 attend them.

04:29:24 7 And there would be from time to time
04:29:26 8 representation from either one of my staff groups
04:29:28 9 or possibly some of Dr. Houghton's staff groups.

04:29:30 10 Q. Do you know Dr. Lilly?

04:29:32 11 A. Yes, I do.

04:29:32 12 Q. Was he there?

04:29:36 13 A. I think he was. To the best of my
:29:40 14 recollection, I think he was.

04:29:42 15 Q. And your memory is that the presenter
04:29:42 16 was Dr. Carchman?

04:29:44 17 A. Yes, that's correct.

04:29:54 18 Q. Do you recall if any decision was
04:29:58 19 made on the basis of the presentation?

04:30:00 20 A. My recollection is it was not a
04:30:02 21 decision presentation. It was for information
04:30:02 22 only.

04:30:32 23 Q. Have you ever had discussions about
04:30:36 24 nicotine with Mr. Campbell? I guess I have to
04:30:42 25 say President and CEO Campbell.

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04:30:46 2 A. I have not personally had specific
04:30:48 3 discussions with Mr. Campbell about nicotine.

04:30:50 4 Q. Have you been present at
04:30:50 5 discussions?

04:30:52 6 A. I have been present in discussions
04:30:56 7 about nicotine and addiction of nicotine as far
04:30:58 8 as smokers are concerned and so forth.

04:31:02 9 Q. And Mr. Campbell was present at those
04:31:02 10 same discussions?

04:31:04 11 A. Yes, I believe he was.

04:31:08 12 Q. Place that discussion in time, if you
04:31:08 13 can.

04:31:12 14 A. Well, it was basically the one or two
04:31:16 15 times that I was present, it was usually in the
04:31:18 16 context of one of our weekly staff meetings, and
04:31:22 17 it was more of a -- let me call it a bit of an
04:31:24 18 emotional discussion amongst those of us in our
04:31:26 19 company.

04:31:26 20 There were no facts or no
04:31:28 21 presentation that was made. There was no
04:31:32 22 specific reason for having it, other than it was
04:31:34 23 put in the context of, this is what people are
04:31:38 24 saying now that we're doing, and we know that
04:31:38 25 that's wrong.

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:31:40 2 And a good example would be, for
04:31:44 3 example, to say, how can something be addictive
04:31:46 4 in that terminology if millions of people stop
04:31:52 5 smoking every year? Or I don't feel -- not me
04:31:54 6 personally, but as an individual in that
04:31:56 7 discussion, look, I've stopped smoking, or can
04:31:58 8 stop smoking over the weekends and so on and so
04:32:00 9 forth, and smoke more during the week or less
04:32:04 10 during the week on an as-needed basis.

04:32:04 11 How can somebody be calling this
04:32:08 12 particular product addictive in that way, shape
04:32:10 13 or form? Those are, I say, the general nature of
:32:12 14 those types of discussions.

04:32:14 15 Q. You said the weekly staff meetings.
04:32:14 16 What are the weekly staff meetings?

04:32:18 17 A. Mr. Campbell had his direct reports
04:32:20 18 in New York and also in Richmond, in that case
04:32:22 19 Dr. Houghton and myself, come to New York for a
04:32:24 20 Monday staff meeting.

04:32:26 21 Q. Every Monday?

04:32:30 22 A. Just about every Monday, that's
04:32:30 23 correct.

04:32:36 24 Q. And at the discussion you just
04:32:40 25 recalled, did Dr. Houghton ever comment on any of

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1 Darrah - Highly Confidential - Trade Secret
04:32:46 2 the research that the research center had done on
04:32:46 3 nicotine and whether or not it was addictive?
04:32:48 4 A. No, he did not.
04:32:52 5 Q. Did anyone ever comment on Philip
04:32:58 6 Morris research on nicotine and whether or not it
04:32:58 7 was addictive?
04:33:00 8 A. To the best of my knowledge and
04:33:00 9 remembrance there was no comment made about
04:33:02 10 research relative to this subject.
04:33:06 11 Q. So you and Dr. Houghton would pretty
04:33:08 12 regularly get on an airplane and fly to New York
04:33:10 13 on Monday mornings?
04:33:10 14 A. That's correct.
04:33:16 15 Q. Do you recall flying to New York on
04:33:20 16 the Monday morning of the Day One broadcast,
04:33:22 17 that's February 28th, and being present at a
04:33:24 18 meeting where there was a discussion about how to
04:33:28 19 respond to the upcoming Day One broadcast?
04:33:32 20 A. I don't remember doing that,
04:33:32 21 Mr. Payton.
04:33:38 22 Q. Do you recall being present at a
04:33:42 23 meeting the next Monday, which I believe is March
04:33:50 24 7, 1994, which meeting was held to discuss the
04:33:54 25 anticipated second Day One broadcast that

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1 Darrah - Highly Confidential - Trade Secret
04:33:56 2 evening, March 7?

04:33:58 3 A. I don't specifically remember that
04:34:00 4 meeting. If we had a staff meeting in New York
04:34:02 5 on that Monday and I was available, I probably
04:34:04 6 went to the staff meeting. But I don't remember
04:34:06 7 that subject being a subject that was discussed
04:34:08 8 in the staff meeting.

04:34:26 9 Q. And did Dr. Carchman sometimes attend
04:34:28 10 the weekly staff meetings?

04:34:30 11 A. No, he did not.

04:34:32 12 Q. The only two persons from Richmond
04:34:34 13 that would fly would be you and Dr. Houghton?

04:34:38 14 A. Under most circumstances, yes.
04:34:40 15 Unless there was a specific subject that we
04:34:44 16 wanted to bring somebody with us to explain to
04:34:44 17 the group.

04:34:48 18 Q. They would be -- because of the
04:34:50 19 subject matter, there may be someone else added
04:34:50 20 to the group?

04:34:52 21 A. There would be a subject matter
04:34:54 22 expert we would want to bring along, for whatever
04:34:54 23 the reason.

04:35:18 24 Q. Now, when you were the vice president
04:35:24 25 in charge of production and then later the vice

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1 Darrah - Highly Confidential - Trade Secret
04:35:26 2 president in charge of manufacturing, that's just
04:35:28 3 a title change, same responsibilities you had
04:35:32 4 from '89 to '95, is that --

04:35:32 5 A. That's correct.

04:35:34 6 Q. When you were the vice president, I
04:35:36 7 think you said that the flavor center reported to
04:35:38 8 you.

04:35:40 9 A. The flavor center was part of my
04:35:42 10 responsibilities. The reporting line of the
04:35:44 11 flavor center was to the general manager of the
04:35:46 12 processing plants.

04:35:52 13 Q. And the general manager of the
04:36:00 14 processing plants in the -- for the last several
04:36:06 15 years, has that been Mr. Whitman?

04:36:06 16 A. That's correct.

04:36:12 17 Q. Are you familiar with the effort
04:36:22 18 undertaken by, first, the R&D -- the research
04:36:24 19 center, and then later by the flavor center, to
04:36:30 20 learn what the specific ingredients were in the
04:36:34 21 various flavors that Philip Morris was purchasing
04:36:36 22 from outside flavor houses?

04:36:48 23 A. What I had heard that Philip Morris
04:36:48 24 was doing, when I came back from Europe, because
04:36:52 25 of ingredients issues, was trying to determine

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1 Darrah - Highly Confidential - Trade Secret
04:36:56 2 which ingredients were utilized in all aspects of
04:37:00 3 prepared flavors that were prepared outside of
04:37:02 4 our normal piece of operations.

04:37:08 5 I was not aware that the flavor
04:37:12 6 center or the flavor facility that we have was
04:37:16 7 actively involved in assisting R&D in that
04:37:16 8 effort.

04:37:22 9 Q. You weren't aware that at some point
04:37:26 10 the flavor center actually took over
04:37:32 11 responsibility for this -- took over
04:37:36 12 responsibility for making these findings?

04:37:38 13 A. I'm sorry. What do you mean by
04:37:40 14 "findings"?

04:37:42 15 Q. That at some point in the process of
04:37:46 16 analyzing the flavors to see what the chemical
04:37:52 17 ingredients were, the flavor center took over the
04:37:54 18 responsibility for that project.

04:37:58 19 MR. NUNLEY: John, is that based on
04:38:02 20 testimony or a document? Because that -- I'll
04:38:02 21 just leave it at that.

04:38:40 22 MR. PAYTON: Yes. Yes. It is
04:38:44 23 contained almost as I stated it in one of these
04:38:44 24 reports.

04:38:46 25 MR. NUNLEY: May I see it?

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04:38:46 2 MR. PAYTON: This isn't the right
04:38:48 3 one.

04:39:24 4 Q. What's the flavor center?

04:39:26 5 A. I'm sorry?

04:39:26 6 Q. What is the flavor center?

04:39:30 7 A. It is a facility where Philip Morris
04:39:36 8 prepares bulk dry flavors and bulk liquid flavors
04:39:40 9 from various concentrates to be shipped to either
04:39:44 10 manufacturing affiliates within the U.S., outside
04:39:48 11 the U.S., or for contract manufacturing licensee
04:39:50 12 operations outside the United States for
04:39:52 13 utilization.

04:39:56 14 MR. PAYTON: What I have, Chip, is
04:40:02 15 the 1992 Philip Morris U.S.A. R&D strategic
04:40:04 16 plan. I'm going to read you two sentences, but
04:40:04 17 I'll hand it to you.

04:40:06 18 MR. NUNLEY: You can just hand it to
04:40:08 19 me. I'll read it.

04:40:12 20 MR. PAYTON: "Flavor suppliers."
04:40:14 21 It's right where the flag is.

04:40:38 22 MR. NUNLEY: John, I'm sure you
04:40:40 23 didn't mean to, but what you said is not what's
04:40:44 24 written there. I'll tell you why, if you would
04:40:46 25 like me to tell you.

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04:40:46 2 MR. PAYTON: I'll just ask him.

04:40:48 3 MR. NUNLEY: Well, no. What you

04:40:52 4 represented, as I understand it, John, was that,

04:40:56 5 as I understood it, the effort to determine

04:41:00 6 ingredients in flavors had initially been done by

04:41:06 7 flavor technology or R&D, and then was shifted to

04:41:06 8 the flavor center.

04:41:06 9 MR. PAYTON: Yes.

04:41:08 10 MR. NUNLEY: I don't believe that's

04:41:08 11 true. I don't think that's what the document

04:41:08 12 says.

04:41:10 13 I think what the document says is

04:41:12 14 that it was completed by R&D and then once it was

04:41:14 15 completed, the flavor center picked it up and

04:41:18 16 just checked incoming flavors for ingredients. I

04:41:20 17 don't believe the flavor center was involved in

04:41:24 18 doing analytical testing for the purpose of

04:41:28 19 determining ingredients in flavors.

04:41:30 20 I think they did analytical testing

04:41:32 21 to meet specs, but not for making determinations

04:41:36 22 of ingredients in flavors.

04:41:52 23 MR. PAYTON: Okay. Let me just read

04:41:54 24 the three sentences. You may be right. I think

04:42:00 25 it's subject to that -- it's not clear to me.

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2 Q. I'm reading one little paragraph,

3 Mr. Darrah. "Flavor suppliers. Objectives of
4 the flavor specification group have been
5 completed. During the last several years over
6 600 flavor formulations have been thoroughly
7 analyzed and specifications have been
8 established.

9 "All flavors currently in use meet
10 German food law regulations. The responsibility
11 for analysis of current flavors has been shifted
12 from R&D to the flavor center. R&D will
13 continue, however, to analyze and establish
14 specifications for new flavors."

15 Were you aware of that? Do you
16 understand that?

17 A. Yes, I understand that, and I
18 understand what the background of that was.

19 Q. Okay. Go ahead.

20 A. The shipment of flavors to Philip
21 Morris Germany required us to issue a certificate
22 that those flavors conform to the German food
23 law. This is a requirement that our German
24 Philip Morris businesspeople in Munich required.

25 Up until that point, because of the

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2 fact that we did not know, I do not believe, all
3 the ingredients that were in flavors, that
4 certificate was issued by our R&D organization,
5 although the flavors were manufactured, if you
6 will, assembled and shipped from the flavor
7 center itself.

8 I believe, Mr. Payton, what that's
9 referring to is that at the point in time that
10 the ingredients work had been done with the
11 suppliers through R&D, then the certificate
12 issuance to the Philip Morris GMBH in Germany no
13 longer came from the R&D facility. It came from
14 the flavor center.

15 Q. Mr. Darrah, do you understand there
16 may have been two different investigations in
17 place, one to find out the specifications for all
18 flavors, and the other to see if the German
19 food -- I forgot what it is, food law
20 regulations, had been satisfied?

21 A. The one that I was familiar with,
22 obviously --

23 Q. Was the German food law?

24 A. The German food law, and that
25 relationship with issuing certificates from the

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04:44:06 2 flavor center and not from R&D.

04:44:12 3 Q. Were you aware of the other, I think,
04:44:12 4 larger project, which is for Philip Morris
04:44:18 5 U.S.A., to determine the specifications of all of
04:44:20 6 the flavors it used?

04:44:26 7 A. At what time was this we were
04:44:26 8 referring to?

04:44:28 9 Q. I can tell you that I believe the
04:44:32 10 initial project was begun at the end of '86 or in
04:44:34 11 1987.

04:44:36 12 I'm looking at another document. And
04:44:36 13 I believe it took longer than originally
04:44:40 14 anticipated, so it wasn't completed until like
04:44:40 15 1991.

04:44:42 16 A. So the time frame we're saying is
04:44:46 17 between late '89 and 1991, was I aware of the
04:44:50 18 ingredients identification program from R&D?

04:44:50 19 Q. Yes.

04:44:50 20 A. No, I was not.

21 (Continued on the next page.)

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04:45:20 2 THE VIDEO OPERATOR: We're going off
04:45:26 3 the record. The time on the screen is 4:45:25.

04:46:42 4 (Time noted: 4:45 p.m.)

5

6

7

STEPHEN C. DARRAH

8

9 Subscribed and sworn to before me

10 this _____ day of _____, 1995.

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2 C E R T I F I C A T E

3 I, LEE A. BURSTEN, a Registered
4 Professional Reporter and Notary Public within
5 and for the Commonwealth of Virginia, do hereby
6 certify:

7 That STEPHEN C. DARRAH, the witness
8 whose deposition is hereinbefore set forth, was
9 duly sworn by me and that such deposition is a
10 true record of the testimony given by the
11 witness.

12 I further certify that I am not
13 related to any of the parties to this action by
14 blood or marriage, and that I am in no way
15 interested in the outcome of this matter.

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 17th day of July, 1995.

18
19 
20 LEE A. BURSTEN, R.P.R.
21
22
23
24
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EXHIBITS

4

DESCRIPTION

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(Darrah Exhibit 1 for identification,
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(Darrah Exhibit 2 for identification,
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(Darrah Exhibit 8 for identification,
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Darrah dated January 21, 1991.)..... 134 6

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(Darrah Exhibit 9 for identification,
one-page Philip Morris interoffice
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(Darrah Exhibit 10 for identification,
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S. M. Hayward to N. O. Fowler, R. A.
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